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The Perfect Crime? FIFA and the Absence of Accountability in Switzerland

PROFESSOR BRUCE W. BEAN[†]

The true test of a man's character is what he will do when no one is watching. John Wooden¹

INTRODUCTION

In 1904 the Fédération Internationale de Football Association, universally known as FIFA, was established to organize, govern and promote “football,” the sport North Americans and Australians call “soccer.” Football has hundreds of millions of participants everywhere on Earth. Four-year old girls and boys and multi-millionaire superstars play this game, unquestionably the world’s most popular sport.

In May and December 2015 the United States Department of Justice released two indictments charging more than forty FIFA-affiliated persons and entities with bribery and other corrupt transactions extending over twenty-four years.

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1. John Wooden was the basketball coach at UCLA from 1948 to 1975. During this time he won ten NCAA championships, including seven in a row. See *John Wooden*, BIOGRAPHY.COM, <https://www.biography.com/people/john-wooden-21369183>.

What? There's corruption in sports you say? Yes, the many temptations which the billions of dollars football generate have not been neglected. FIFA has endured more than a century of scandals and yet remains all powerful and fundamentally corrupt. Why is this? Does anyone care? Should something be done?

This article briefly reviews FIFA's recent corruption scandals and details the steps FIFA has taken to create its Potemkin style, "good-looking corporate governance." This article highlights that absent imposing accountability on FIFA, the deliberate abuse of FIFA's obligations to players, teams, officials, fans and sponsors of the world's most popular sport will continue. The future for FIFA and football looks a great deal like its past century. The administration of global football is on track to continue its long history of corruption, of mendacity cloaked in opacity.

Part I presents the background of FIFA as an institution, setting out football's global corruption landscape and then focuses on corruption within FIFA today. Part II describes the corporate governance mechanisms that have developed to deal with commercial corruption in the business community and notes the lack of success we have had in this realm. We then consider the most recent FIFA "reforms" triggered by recently revealed scandals, each such reform accompanied by positive-sounding press releases offered by FIFA's spinmeisters and taken directly from FIFA's extensive "Corruption Crisis Playbook." The farcical nature of these reforms is explained. Part III considers the not-very-promising prospects for reform under FIFA's newly elected leadership, most of whose members have long enjoyed FIFA's lucrative opaque mendacity. Part IV surveys possible paths to accountability for FIFA, and Part V concludes by asking whether reform at FIFA is worth the struggle.

FIFA's century-old motto is "For the Game. For the World." As this article demonstrates, however, the actual motto of those who control FIFA and football has been and remains - "Just for Us."

I. FIFA

What is "football?" Football is played in every country, territory,

and remote island² on the Earth, from North Korea and South Sudan to Antarctica.³ It is a game of skill requiring no elaborate infrastructure, no expensive equipment and no extraordinary physical characteristics for those who simply want to kick something like a ball toward a goal. At the height of professional football, of course, extraordinary skills are essential. In 1977 the Brazilian football legend, Pele, published “My Life and the Beautiful Game.”⁴ The “beautiful game” is a phrase that has long been associated with football.⁵ However, as more and more football scandals are revealed, that beautiful game looks very different. Early in 2014 a source leaked millions of documents to reporters at the London Sunday Times. A book based upon this trove of documents, “The Ugly Game: The Corruption of FIFA and the Qatari Plot to Buy the World Cup,”⁶ was published in 2015, describing an organization Pele would not want to recognize.

A. *What Is A FIFA?*

FIFA is a not-for-profit association organized under the Swiss Civil Code.⁷ Its mission is to “organize, govern and promote international football.”⁸ As the global authority for international football, FIFA has 211 members, one from each nation or territory with a football association.⁹ FIFA members are national and other football associations which are also required to be members of one of FIFA’s

2. The Cook Islands, a group of islands spread over nearly 850,000 square miles of the South Pacific, approximately 2000 miles northeast of New Zealand, has a population 15,000. The Cook Islands is a full member of FIFA, as is Montserrat, a tiny Caribbean Island with a population of less than 5000. It is no accident that each of these islands has the same vote as every other FIFA Member, including China with 1.4 billion people and India with 1.3 billion.

3. Nathan Bowen, *Rothera Diary – January 2010*, BRIT. ANTARCTIC SURV. (Jan. 30, 2010), <https://www.bas.ac.uk/blogpost/rothera-diary-january-2010/>.

4. In the original Portuguese the phrase is *jogo bonito*. See Barney Corkhill, *Jogo Bonito: “The Beautiful Game”*, BLEACHER REP. (Oct. 16, 2008), <http://bleacherreport.com/articles/69649-jogo-bonito-the-beautiful-game>

5. *Id.*

6. HEIDI BLAKE & JONATHAN CALVERT, *THE UGLY GAME: THE CORRUPTION OF FIFA AND THE QATARI PLOT TO BUY THE WORLD CUP* (2015).

7. CODE CIVIL [CC][CIVIL CODE] Dec. 10, 1907, SR 210, art. 60 (Switz.).

8. FIFA, FIFA STATUTES (Apr. ed. 2015), http://www.fifa.com/mm/Document/AFFederation/Generic/02/58/14/48/2015FIFASTatutesEN_Neutral.pdf.

9. *Associations*, FIFA, <http://www.fifa.com/associations/> (last visited Dec. 16, 2016).

six continental confederations,¹⁰ CONCACAF,¹¹ CONMEBOL,¹² UEFA,¹³ CAF,¹⁴ AFC,¹⁵ and OFC.¹⁶

It has been recently estimated that global sports businesses generate at least \$80 billion annually.¹⁷ By one estimate football represents almost 40% of all sports revenue.¹⁸ More than 70% of FIFA's revenues arise from the sale of television and marketing rights to its World Cup and regional championship matches conducted every four years.¹⁹ FIFA reported a \$1.34 billion surplus at the end of 2015.²⁰

As a not-for-profit entity organized under Swiss Civil Law FIFA enjoys the unique privileges Switzerland provides to sports governing associations. For example, FIFA pays no income taxes to Switzerland.²¹ Showing no interest in football's decades of match-fixing, money laundering, looting, self-dealing and bribery, Switzerland has become the Nirvana for Sports Criminals. Swiss hospitality to sports crime means that the Swiss are indeed "implicitly complicit" in FIFA's corruption.

B. FIFA and Global Corruption

1. The Department of Justice Indictments

On May 27, 2015 the U.S. Department of Justice announced a

10. FIFA, FIFA STATUTES art. 22 (Apr. ed. 2016), http://resources.fifa.com/mm/Document/AFFederation/Generic/02/78/29/07/FIFASTATUTSWEB_EN_Neutral.pdf?t=1461659845938.

11. CONCACAF - Confederation of North, Central American and Caribbean Association Football. *Id.* art. 22(1).

12. CONMEBOL - Confederacion Sudamericana de Futbol. *Id.* art. 22(1)(a).

13. UEFA - Union des Associations Europeennes de Football. *Id.* art. 22(1)(c).

14. CAF - Confederation Africaine de Football. *Id.* art. 22(1)(d).

15. AFC - Asian Football Confederation. *Id.* art. 22(1)(a).

16. OFC - Oceania Football Association. *Id.* art. 22(1)(f).

17. Matt Andrews & Peter Harrington, *Off Pitch: Footballs Financial Integrity Weaknesses and How to Strengthen Them* 4, 24-56 (Ctr. Int'l Dev. Harv Univ., Working Paper No. 311), http://www.sports.growthlab.cid.harvard.edu/files/icss/files/cid_wp_311.pdf. PricewaterhouseCoopers earlier published an estimate of \$145 billion. PRICEWATERHOUSECOOPER, CHANGING THE GAME: OUTLOOK FOR THE GLOBAL SPORTS MARKET TO 2015 11 (Dec. 2011).

18. Andrews & Harrington, *supra* note 17.

19. Superseding Indictment at 7, United States v. Hawit, Cr. No. 15-252 (S-1) (E.D.N.Y. 2015).

20. 66TH FIFA CONGRESS, FINANCIAL AND GOVERNANCE REPORT 2015 15 (2016).

21. Between 2007 and 2014 FIFA earned \$969 million in profits on almost \$10 billion in revenues. 66TH FIFA CONGRESS, FINANCIAL AND GOVERNANCE REPORT 2015, *supra* note 20. See also Andrews & Harrington, *supra* note 17.

lengthy indictment²² alleging twenty-four years of corrupt activities by FIFA-related persons and entities just in the Western Hemisphere. In December 2015, a ninety-two count superseding indictment (the "Indictment") was announced.²³ In all forty-one individuals and entities affiliated with FIFA have been indicted.²⁴ Of these twenty had pled guilty by the end of 2016.²⁵

Soccer in the United States is not as widely followed as American football, basketball or baseball. Thus, the egregious allegations of FIFA bribery and corruption in the Indictment did not surprise followers of international football in other nations, since for decades they have been learning of FIFA scandals of all kinds,²⁶ including gambling,²⁷ game-fixing,²⁸ money laundering, etc.²⁹ As the *Wall Street Journal* noted: "When [the United States] finally started looking [at football], we were shocked at what we found. We were the only nation that would have been."³⁰

22. *Nine FIFA Officials and Five Corporate Executives Indicted for Racketeering Conspiracy and Corruption*, U.S. DEP'T OF JUSTICE (May 27, 2015), <https://www.justice.gov/opa/pr/nine-fifa-officials-and-five-corporate-executives-indicted-racketeering-conspiracy-and>. The May 2015 indictment is available at <https://www.justice.gov/opa/file/450211/download> (last visited Aug. 4, 2017).

23. *Sixteen Additional FIFA Officials Indicted for Racketeering Conspiracy and Corruption*, U.S. DEP'T OF JUSTICE (Dec. 3, 2015), <https://www.justice.gov/opa/pr/sixteen-additional-fifa-officials-indicted-racketeering-conspiracy-and-corruption>. The superseding indictment occurred on Nov. 25. Superseding Indictment, *supra* note 19.

24. *Sixteen Additional FIFA Officials Indicted for Racketeering Conspiracy and Corruption*, *supra* note 23.

25. See Appendix I for a list of defendants and their status as of January 14, 2017.

26. A number of recent books and uncountable news articles document tales of corruption of all kinds at FIFA. *E.g.*, ANDREW JENNINGS, FOUL! THE SECRET WORLD OF FIFA: BRIBES, VOTE RIGGING AND TICKET SCANDALS (2006); ALAN TOMLINSON, FIFA (FEDERATION INTERNATIONALE DE FOOTBALL ASSOCIATION): THE MEN, THE MYTHS AND THE MONEY (2014); ANDREW JENNINGS OMERTÀ, SEPP BLATTER'S FIFA ORGANISED CRIME FAMILY (2014); HEIDI BLAKE & JONATHAN CALVERT, THE UGLY GAME: THE QATARI PLOT TO BUY THE WORLD CUP (2015).

27. DAVID GOLDBLATT, THE BALL IS ROUND: A GLOBAL HISTORY OF SOCCER 579 (2006).

28. "Match-fixing and betting rackets have been a staple feature of European football for at least forty years." GOLDBLATT, *supra* note 27, at 766. More recently *The Economist* reported, "an alarming number of [Italian] matches are not contests at all, but choreographed performances, the results known before to some of the participants before any whistle is blown." *Match-fixing in Italy You Betcha: Italians Are Not the Only Ones Throwing Matches*, *ECONOMIST* (Aug. 20, 2016), <http://www.economist.com/news/europe/21705256-italians-are-not-only-ones-throwing-matches-you-betcha>.

29. See, *e.g.*, FINANCIAL ACTION TASK FORCE, MONEY LAUNDERING THROUGH THE FOOTBALL SECTOR (2009), <http://www.fatf-gafi.org/media/fatf/documents/reports/ML%20through%20the%20Football%20Sector.pdf>.

30. Will Leitch, *The World Cup of Corruption*, *WALL ST. J.* (May 27, 2016, 3:56 PM) <http://www.wsj.com/articles/the-world-cup-of-corruption-1464379006>.

But let's be fair. FIFA football is not the only corrupt entity out there.

1. Is Football Corruption Unique?

Each and every day of the year the media report new allegations of corruption, bribery, and other breaches of fiduciary duties. Such reports have besmirched college athletics in the United States,³¹ international tennis,³² cycling,³³ baseball,³⁴ for-profit corporations,³⁵ the American Red Cross³⁶ and the political process nearly everywhere. We are in fact overwhelmed with, and most likely inured to, daily allegations of corruption. For example, in just a few weeks surrounding the Rio Olympics in August 2016, corruption was alleged at the International Olympic Committee,³⁷ the World Anti-Doping Authority ("WADA"),³⁸ the drug testing laboratories at the Sochi Winter

31. Jay M. Smith, *Academic Fraud in Commercialized College Athletics*, in GLOBAL CORRUPTION REPORT: SPORT 286-92 (Gareth Sweeney ed. 2016) (describing "academic corner-cutting and administrative chicanery" and concluding "American universities have been indelibly compromised by their willingness to subordinate academic integrity and educational outcomes to the eligibility imperatives of commercialised sport.").

32. Ben Rothenberg, *Italian Match Fixing Suspensions Imposed Amid Criticism of Tennis Watchdog*, N.Y. TIMES (July 24, 2016), <http://www.nytimes.com/2016/07/25/sports/tennis/italy-tennis-match-fixing-suspensions.html>.

33. Rod Nordland, *Afghan Women, Eager to Play, Are Relegated to the Sidelines*, N.Y. TIMES (Apr. 26, 2016), <http://www.nytimes.com/2016/04/27/world/asia/afghanistan-women-sports.html>.

34. Mike Axisa, *Banned Jenrry Mejia Plans to Sue MLB, Alleges Years of 'Corrupt Mob-like Activity'*, CBSSPORTS.COM (July 11, 2016), <http://www.cbssports.com/mlb/news/banned-jenrry-mejia-plans-to-sue-mlb-alleges-years-of-corrupt-mob-like-activity/>.

35. Robert Carmona-Borjas, *The Corporate Climate of Corruption at Caterpillar Construction*, INT'L POL'Y DIG. (July, 13, 2016), <https://intpolicydigest.org/2016/07/13/corporate-climate-corruption-caterpillar-construction/>.

36. *News Releases*, CHUCK GRASSLEY | U.S. SENATOR FROM IA (June 16, 2016), <http://www.grassley.senate.gov/news/news-releases/grassley-releases-memo-red-cross%E2%80%99haiti-earthquake-relief-response-finds-red>. The American Red Cross fought the Government Accountability Office's inquiry for nine months. The American Red Cross was Congressionally chartered in 1900. A June 17, 2016 *New York Times* editorial asked the American Red Cross to rebuild trust with the American public after it found 25% of Haitian aid funds contributed (\$488 million) were dedicated to administration rather than direct aid. *Trust Deficit at the Red Cross*, N.Y. TIMES (June 17, 2016), <http://www.nytimes.com/2016/06/17/opinion/trust-deficit-at-the-red-cross.html>.

37. *Synopsis: The Lords of the Rings, Real Sports with Bryant Gumbel*, HBO.COM (July 26, 2016), <http://www.hbo.com/real-sports-with-bryant-gumbel/episodes/0/232-episode/synopsis/july-on-real-sports-with-bryant-gumbel.html>.

38. Rebecca R. Ruiz et. al., *Even With Confession of Cheating, World's Doping Watchdog Did Nothing*, N.Y. TIMES (June 15, 2016), <http://www.nytimes.com/2016/06/16/sports/olympics/world-anti-doping-agency-russia-cheating.html>. The WADA scandal is tragic, if not surprising. In December 2012, WADA received an email from an Olympic athlete from Russia. She was asking for help. The athlete,

Olympics in 2014,³⁹ the summer Olympics in 2016⁴⁰ and the entire Russian Olympic⁴¹ and Paralympic programs.⁴² Beyond sports, we have had allegations of bribery, corruption and worse involving the Chief Executive Officer of Volkswagen AG,⁴³ the bankers conducting the London gold-fixing scandal,⁴⁴ the chief of the National Bank of Bangladesh,⁴⁵ oligarchs in Moldova,⁴⁶ the President of Iran,⁴⁷ international bankers involved with the LIBOR fixing scandal,⁴⁸ a run-of-the-mill Congressman from Philadelphia⁴⁹ and a twelve-term

a discus thrower named Darya Pishchalnikova, had won a silver medal four months earlier at the London Olympics. She said that she had taken banned drugs at the direction of Russian sports and antidoping authorities, and that she had information on systematic doping in her country. Please investigate, she implored the agency in the email, which was written in English. "I want to cooperate with WADA," the email said. But WADA, the global regulator of doping in Olympic sports, did not begin an inquiry, even though a staff lawyer circulated the message to three top officials, calling the accusations "relatively precise," including names and facts. Instead, it did something that seemed antithetical to its mission to protect clean athletes. It sent Ms. Pishchalnikova's email to Russian sports officials — the very people that she said were running the doping program. *Id.*

39. Rebecca R. Ruiz, *Russia May Face Olympics Ban as Doping Scheme Is Confirmed*, N.Y. TIMES (July 18, 2016), <http://www.nytimes.com/2016/07/19/sports/report-confirms-state-sponsored-doping-by-russia-at-olympics.html>.

40. Rebecca R. Ruiz, *Rio Drug-Testing Lab Is Suspended by Antidoping Regulator*, N.Y. TIMES (June 24, 2016), <http://www.nytimes.com/2016/06/25/sports/olympics/rio-drug-testing-lab-is-suspended-by-wada.html>.

41. Ruiz et. al., *supra* note 38.

42. *Rio Paralympics 2016: Russian Athletes Banned After Doping Scandal*, BBC (Aug. 8, 2016), <http://www.bbc.com/sport/disability-sport/37002582>.

43. Jack Ewing & Martin Winterkorn, *Ex-C.E.O. of Volkswagen, Is Under Investigation*, N.Y. TIMES, (June 24, 2016), <http://www.nytimes.com/2016/06/21/business/international/volkswagen-winterkorn-germany.html>.

44. Jonathan Stempel, *Deutsche Bank Settles U.S. Gold, Silver Price-fixing Litigation*, REUTERS (Apr. 14, 2016, 1:17 PM), <http://www.reuters.com/article/deutsche-bank-lawsuit-metals-idUSL2N17H1IA>.

45. Megha Bahree, *Former Bangladesh Bank Chief Blames Global System for Theft*, N.Y. TIMES (June 24, 2016), <http://www.nytimes.com/2016/06/23/business/dealbook/former-bangladesh-bank-chief-blames-others.html>.

46. Luke Coffey, *IMF Caught in Moldova's Corruption Vortex, Time for the West to Wake up*, WORLD POST (July 22, 2016), http://www.huffingtonpost.com/luke-coffey/imf-caught-in-moldovas-co_b_11051150.html.

47. Iran's President has been accused of awarding bonuses of hundreds of thousands of dollars to his associates when the law sets the maximum salary at about \$30,000 per year. Thomas Erdbrink, *Iran's President Is Confronted by Scandal Over Inflated Government Wages*, N.Y. TIMES, (July 17, 2016), <http://www.nytimes.com/2016/07/18/world/middleeast/irans-president-is-confronted-by-scandal-over-inflated-government-wages.html>.

48. Jeff Desjardins, *Chart: The Epic Collapse of Deutsche Bank*, VISUAL CAPITALIST (July 8, 2016, 10:45 AM), <http://www.visualcapitalist.com/chart-epic-collapse-deutsche-bank/>.

49. Maryclaire Dale, *Congressman Convicted in Case that Entangled Son, Wife*, BIG STORY (June 21, 2016, 6:20 PM),

Congresswoman from Florida.⁵⁰ The list is unending. But for FIFA, while corruption scandals are constantly being reported, they go unremedied and unpunished.

C. FIFA's History of Corruption

1. Early Corruption & Escalation Under Blatter⁵¹

While the Department of Justice Indictment covers acts by many of the defendants dating back twenty-four years, football's intimate relations with bribery and corruption extend over many decades. David Goldblatt's definitive history of football includes anecdotes of football corruption that have occurred throughout FIFA's history. For example, the German Bundesliga of sixteen professional football teams was created in 1963; it enjoyed an early broadcast rights deal described as "one of the most generous of the early TV deals in Europe."⁵² However, at the time "in the grey areas and loopholes created by the games complex system of regulation seethed an entire subculture of hidden payments, hot money, tax havens and corruption."⁵³ In 1971 information about bribes to win or lose football matches at the end of the season became public. Ultimately an "investigation into Bundesliga match-fixing and bribery ... generated so much irrefutable documentation that at least two-thirds of the entire league were implicated and over fifty players, coaches and [team] presidents" were banned from football for life.⁵⁴ The list of early football scandals is close to endless. Goldblatt includes descriptions of corruption throughout football, including Yugoslavia,⁵⁵ Brazil,⁵⁶ China⁵⁷ and

<http://bigstory.ap.org/article/ff1b57eab5884719bad7409d41fdb984/verdict-reached-pennsylvania-congressmans-bribery-case>.

50. Scott Maxwell, *Corrine Brown Delivered ... to Herself, Feds Say*, ORLANDO SENTINEL (July 13, 2016, 2:58 PM), <http://www.orlandosentinel.com/opinion/os-corrine-brown-indicted-scott-maxwell-20160712-column.html>.

51. While FIFA has an incontrovertibly corrupt past, this section focuses principally upon FIFA during the seventeen-year reign of former FIFA President Joseph "Sepp" Blatter.

52. GOLDBLATT, *supra* note 27, at 471.

53. *Id.*

54. *Id.* at 472.

55. In 1966, more than half a century ago, Partizan Belgrade, a team from Yugoslavia competed in the European Cup against Real Madrid. They were reportedly "offered the game" by the referee for \$15,000 in hard currency. "However, [they] decided they could not afford it." GOLDBLATT, *supra* note 27, at 438.

56. *Id.* at 819.

57. *Id.* at 849-50.

France⁵⁸ to Greece,⁵⁹ Portugal,⁶⁰ Romania,⁶¹ Italy,⁶² Poland,⁶³ and South Africa.⁶⁴

This history of corruption continued under FIFA president Joseph “Sepp” Blatter. The Department of Justice Indictment names individuals connected to the two Western Hemisphere football confederations, CONMEBOL and CONCACAF, as well as individuals and companies involved in marketing rights to various football events.⁶⁵ But, the most powerful personage in football during most of the period covered by the Department of Justice Indictment was Sepp Blatter. Blatter was elected to his first four-year term as FIFA President in 1998 after serving in various positions at FIFA under Brazilian João Havelange, FIFA’s President from 1974 to 1998.⁶⁶ Blatter was hired by Havelange in 1975 and by 1981 had become second in command at FIFA.⁶⁷ It was under Havelange that FIFA and global football first saw great financial gains.⁶⁸ During his years as President, Havelange “almost single-handedly... drove the expansion of the game and hugely increased its income from television rights and commercial activity.”⁶⁹ Havelange (and Blatter) oversaw FIFA’s contracts with commercial sponsors such as Coca-Cola and Adidas, and, as reported:

58. *Id.* at 572.

59. *Id.* at 764.

60. *Id.* at 763.

61. *Id.* at 706-07.

62. In Italy a gambling and game fixing scandal arose in early 1980 which resulted in police raids on March 2, 1980. At half-time during Sunday matches “the police swooped down on the nation’s football grounds and dressing rooms and eleven players were arrested.” GOLDBLATT, *supra* note 27, at 579.

63. In Poland a team “bribed opponents and bugged dressing rooms.” GOLDBLATT, *supra* note 27, at 704.

64. *Id.* at 885-86.

65. Indictment, *supra* note 19.

66. *Sepp Blatter profile: How a wedding singer became the most powerful player in football*, ITV REPORT (May 29, 2015, 2:50 AM), <http://www.itv.com/news/2015-05-29/sepp-blatter-profile-how-a-wedding-singer-became-the-most-powerful-player-in-football/>.

67. *Sepp Blatter calls predecessor Joao Havelange a ‘teacher,’ ‘like a brother,’* ESPN FC (Aug. 16, 2016), <http://www.espnfc.us/blog/fifa/243/post/2931329/sepp-blatter-calls-predecessor-joao-havelange-a-teacher,-like-a-brother>.

68. Martyn Ziegler, *Havelange, Father of Fifa Corruption, Dies Aged 100*, TIMES (Aug. 17, 2016, 12:01 AM), <http://www.thetimes.co.uk/article/havelange-father-of-fifa-corruption-dies-aged-100-tljct58xq>.

69. Havelange is reported to have described his FIFA career as follows: “I found an old house and \$20 in the kitty,” he boasted. “On the day I departed 24 years later, I left property and contracts worth over \$4 billion. Not too bad, I’d say.” Ziegler, *supra* note 68.; *João Havelange*, TIMES (Aug. 17, 2016, 12:01 AM), <http://www.thetimes.co.uk/article/joao-havelange-khdnxf0pc>.

Under Havelange, Fifa became deeply corrupt. By most accounts, he was a shrewd operator who ruled by fear and manipulation. [I]n 2014, a report by Fifa's own ethics committee had revealed the findings of a Swiss court case that showed that millions of dollars in bribes had been paid to both Havelange and his former son-in-law, Ricardo Teixeira, who was also a member of Fifa's executive committee.⁷⁰

Blatter was elected FIFA president in June 1998, succeeding Havelange, who became Honorary FIFA President.⁷¹ Blatter, Havelange and Havelange's former son-in-law, Ricardo Teixeira, the President of the Brazilian Football Association from 1989 until 2012 and a member of the FIFA Executive Committee, have each been previously connected to a scandal involving International Sports and Leisure ("ISL"), a Swiss marketing company which purchased the rights to broadcast FIFA events as well as other sports related events.⁷² Swiss legal proceedings in 2008 revealed that the bribes uncovered in a Swiss investigation exceeded \$100 million,⁷³ just for the period 1989 to 1999.⁷⁴

Upon Havelange's death in August 2016 the Times of London ran its story under the headline – "Havelange, father of Fifa corruption, dies aged 100."⁷⁵ Having learned his ethics and management style from Havelange, Blatter was elected and reelected President of FIFA a total of five times between 1998 and 2015.⁷⁶ Blatter's seventeen years as the dominant power in global football have been described as a "never-ending governance crisis,"⁷⁷ and Blatter himself has been characterized

70. *João Havelange*, *supra* note 69.

71. *João Havelange*, FIFA.COM, <http://www.fifa.com/about-fifa/the-president/joao-havelange.html> (last visited Aug. 5, 2017).

72. David Bond, *The £66m 'Bribe' Shadow Hanging over Fifa*, TELEGRAPH (March 13, 2008, 12:01 AM), <http://www.telegraph.co.uk/sport/columnists/davidbond/2294323/The-66m-bribe-shadow-hanging-over-Fifa.html>.

73. *Id.*

74. ISL had declared bankruptcy in 2001. Jakob Staun, *The fall of ISL*, PLAY THE GAME (Feb. 6, 2006), <http://www.playthegame.org/news/news-articles/2006/the-fall-of-isl/>.

75. Ziegler, *supra* note 68.

76. Sophie Gilbert, *Another Term for Soccer's Most Powerful Man*, THE ATLANTIC (May 29, 2015), <https://www.theatlantic.com/international/archive/2015/05/sepp-blatter-wins-fifa-election/394478/>.

77. Antoine Duval, *The Rules of the Game: The Need for Transparency in Sports Governance*, PLAY THE GAME (Jan. 7, 2016), http://www.playthegame.org/news/comments/2016/034_the-rules-of-the-game-the-need-for-transparency-in-sports-governance/.

as “a most successful non-homicidal dictator.”⁷⁸ Blatter’s reign was marked by a steady stream of internal and external investigations into embezzlement and bribery, culminating in allegations of vote buying in the selection of Russia and Qatar to host the 2018 and 2022 World Cups.⁷⁹ Of the twenty-two FIFA Executive Committee members who voted to choose Russia and Qatar in 2010, at least half have been accused of corruption related to the process.⁸⁰ Such is FIFA’s recent operating history.

2. FIFA’s Reaction to Decades of Corrupt Activities in the Game

As discussed in Section IV.C.2, there are few Swiss laws applicable to FIFA.⁸¹ The consequences of the absence of national laws or other authorities or constituencies with some power to impose accountability on FIFA have been stark. For example, with no accountability, it took a century, until October 2004, for FIFA to create its first Ethics Code!⁸² One might imagine that, while it may have been a century in coming, the adoption of the FIFA Ethics Code was a positive, progressive step in the process of curtailing football’s tradition of misdeeds. As will be demonstrated, however, FIFA’s Ethics Code has served principally as a façade behind which FIFA corruption thrives, a good-looking prop in FIFA’s corporate governance charade.

The FIFA Ethics Code states that it “shall apply to conduct that damages the integrity and reputation of football and in particular to illegal, immoral and unethical behavior.”⁸³ Conveniently, however, it applies solely “to all officials and players as well as match and players’ agents who are bound by this Code on the day the infringement is

78. Marina Hyde, *Sepp Blatter’s Limp Challengers Reveal Him as the World’s Best Dictator*, GUARDIAN (Jan 21, 2015, 6:27 AM), <https://www.theguardian.com/football/blog/2015/jan/21/sepp-blatter-challengers-dictator-marina-hyde>.

79. Vivienne Walt, *Russia and Qatar’s World Cups Under Scrutiny after FIFA Chief Resigns*, TIME (June 3, 2015), <http://time.com/3906882/fifa-russia-qatar/>.

80. Tariq Panja et al., *A League of His Own: How Sepp Blatter Controls Soccer*, BLOOMBERG (Apr. 30, 2015), <http://www.bloomberg.com/graphics/2015-sepp-blatter-fifa/>.

81. See discussion *infra* Section IV.C.2.

82. HANS-JOACHIM ECKERT, STATEMENT CHAIRMAN OF THE FIFA ADJUDICATORY CHAMBER ON THE EXAMINATION OF THE ISL CASE (2013), <http://www.fifa.com/mm/document/affederation/footballgovernance/02/06/60/80/islreporteckert29.04.13e.pdf>.

83. FIFA, FIFA CODE OF ETHICS art. 1 (2012), http://resources.fifa.com/mm/document/affederation/administration/50/02/82/codeofethics_v211015_e_neutral.pdf.

committed.”⁸⁴ Thus, a misdeed, such as payment by or receipt of a bribe by a FIFA official, should be covered. In practice, when a party is subject to the FIFA Ethics Code and an “infringement” is likely to be established, the person subject to the Code simply resigns from his football position thus making the Code no longer applicable. In such cases, FIFA may simply note that any action by FIFA would be “superfluous.”⁸⁵

Even so, we reasonably might expect that at least since 2004 the Ethics Code could have had a positive impact. In practice, the Ethics Committee imposes meaningless sanctions, occasionally “banning from football” an official caught red-handed who does not resign.⁸⁶ And it almost always the case that a corrupt act FIFA itself should have detected if it had implemented modern corporate governance practices, must be made public by others before FIFA will act.⁸⁷

Throughout Blatter’s years as President, FIFA had a tragic history of involvement in scandals and allegations of bribery and corruption.⁸⁸ As these allegations became public, FIFA did “respond,” but not with fundamental changes that dealt with the underlying problems. Rather, FIFA’s responses, proclaimed with positive-sounding press releases, were calculated to assuage public outrage. FIFA’s long experience in

84. *Id.* art. 2.

85. One of many recent examples occurred in 2013 when the FIFA Ethics Committee was looking into tens of millions in bribes that had been allegedly received by former FIFA President Havelange, his former son-in-law, Ricardo Teixeira and Dr. Nicolas Leoz, another FIFA official, between 1992 and 2000. The facts had been established in Swiss Government proceedings of the Department of Public Prosecutions of the Canton of Zug. After reviewing these facts, the Adjudicative Chamber of the Ethics Committee issued a Statement dated April 29, 2013, which included the following finding: “I note that Mr. Havelange resigned from his position as Honorary President effective from 18.04.2013 and that Dr. Nicolás Leoz resigned from his positions as a FIFA Executive Committee member, as a FIFA standing committee member and as CONMEBOL President effective from 24.04.2013. Hence, any further steps or suggestions are superfluous.” ECKERT, *supra* note 82, at 8. Teixeira and Leoz are charged in the Indictment. Superseding Indictment, *supra* note 19, at 1.

86. INDEPENDENT ETHICS COMMITTEE ADJUDICATORY CHAMBER, INDEPENDENT ETHICS COMMITTEE BANS FOOTBALL OFFICIALS (Dec. 8, 2016), <http://www.fifa.com/governance/news/y=2016/m=12/news=independent-ethics-committee-bans-football-officials-2859090.html>.

87. One such example relates to the 2006 World Cup hosted by Germany which allegedly was chosen over South Africa in a vote that may have involved an \$8million bribe. Ten years later, FIFA imposed a one year suspension from football on the former President of the German Football Association, Wolfgang Niersbach. *Fifa hands one-year ban to former DFB president Wolfgang Niersbach*, GUARDIAN (July 25, 2016, 9:58 AM), <https://www.theguardian.com/football/2016/jul/25/fifa-ban-dfb-president-wolfgang-niersbach>. See discussion *infra* Section IV.A.2.

88. See, e.g., Mikhail Reider-Gordon, *Money Laundering, Corruption and the World Cup: In the Wake of Brazil 2014*, 21 SW. J. INT’L L. 97 (2014); Roger Peilke Jr., *How Can FIFA Be Held Accountable?*, 16 SPORT MGMT. REV. 255 (2013).

addressing public outrage by announcing highly visible, entirely ineffective maneuvers makes clear that FIFA has developed an elaborate “Corruption Crisis Playbook” of responses to various categories of corruption, such as bribes, match-fixing, money laundering, outrageous squandering of FIFA funds, etc. Indeed, FIFA has proudly and loudly announced uncountable investigations, policy statements, reform announcements, study commissions, solutions subcommittees, and, recently its simultaneous task forces: the Task Force Ethics Committee; the Task Force Revision of Statutes; the Task Force Transparency & Compliance; as well as an Independent Governance Committee.⁸⁹ As we shall see, such reactions to publicly revealed corruption have been window dressing, not a single one of which has had a meaningful impact on the pervasive culture of corruption which continues to be the lifeblood of football.⁹⁰

FIFA’s century of corruption has arisen and flourished in the unique, protective culture of Swiss hospitality to sports crime, where FIFA is accountable to no one anywhere. Although domiciled in Switzerland, FIFA acts in many ways as a supranational entity with the impunity a sovereign nation possesses. The *Washington Post* has described FIFA as “notoriously corrupt and yet seemingly invincible.”⁹¹ Others have observed:

Somehow, the organization has maneuvered itself into a position where none of its members can really be prosecuted for much of anything they do under FIFA auspices, much as some institutions might try. Headquartered in Zurich, the organization has immunity under Swiss law and creates a state-within-a-state when it puts on World Cups, ensuring an equivalent to the protection from local law that diplomats enjoy.⁹²

89. See discussion *infra* Section III.

90. See Superseding Indictment, *supra* note 19. (detailing corruption within Cobcacaf, Comeboland, afdroican, Asian and European football associations). See, e.g., FINANCIAL ACTION TASK FORCE, MONEY LAUNDERING THROUGH THE FOOTBALL SECTOR (2009), See also GOLDBLATT *supra* note 27.

91. Christopher Ingraham, *The Toll of Human Casualties in Qatar*, WASH POST (May 27, 2015), <https://www.washingtonpost.com/news/wonk/wp/2015/05/27/a-body-count-in-qatar-illustrates-the-consequences-of-fifa-corruption/>.

92. Leander Schaerlaeckens, *Sepp Blatter and His World of Corruption Detailed in New Bloomberg Expos*, YAHOO! SPORTS (Apr. 30, 2015, 3:38 PM), <http://sports.yahoo.com/blogs/soccer-fc-yahoo/sepp-blatter-and-his-world-of-corruption-detailed-in-new-bloomberg-businessweek-expos-233-193808707.html>. See also, *infra* Section IV.D.1 (discussing an investigation of more than \$100,000,000 in bribes which a

D. A Pair of Stunning Decisions

At least since 1984 the FIFA Executive Committee had announced the nation selected to host its quadrennial World Cup competitions six years in advance, giving the host country time to prepare for the event.⁹³ Under Blatter this process was changed to permit the FIFA Executive Committee to award both the 2018 and the 2022 World Cups in 2010.⁹⁴

FIFA conducted a due diligence investigation of each of the nations seeking to host the World Cup. England, Belgium, the Netherlands, Spain, Portugal, and Russia sought to host the 2018 World Cup, while Australia, Japan, Qatar, South Korea and the United States were considered by FIFA for the 2022 World Cup.⁹⁵ FIFA rated each of these potential host nations “low risk” except Russia, which was “medium risk,” and Qatar, which was “high risk.”⁹⁶ Despite this, on December 2, 2010 FIFA announced that its Executive Committee had selected Russia and Qatar to host the 2018 and 2022 World Cups.⁹⁷ One commentator has noted that these choices “could reasonably be described as having stunned nearly everyone.”⁹⁸

Russia is the largest country in the world by land area, but ranks 119th out of 168 nations rated in Transparency International’s Corruption Perceptions Index.⁹⁹ Russia has a long football tradition with many teams actively competing and there can be no doubt that football is a major sport there. By contrast, Qatar, the 2022 host, is slightly smaller than Connecticut and has fewer than 2 million residents.¹⁰⁰ Qatar does not have a strong football tradition, no team from Qatar has ever qualified for World Cup play and Qatar has no

Swiss Prosecutor found did not violate Swiss law and which could not be pursued under the FIFA Ethics Code, which had not been adopted at that time).

93. See Superseding Indictment, *supra* note 19.

94. See FIFA, *supra* note 8, art. 25.2(s).

95. FIFA EVALUATION GRP., EVALUATION REPORTS ON THE BIDS FOR THE 2018 AND 2022 FIFA WORLD CUPS (2010), http://www.fifa.com/mm/document/tournament/competition/01/33/59/45/bid_evaluation_report_1911.pdf.

96. *Id.* at 9.

97. *Russia and Qatar to host 2018 and 2022 FIFA World Cups, respectively*, FIFA (Dec. 2, 2010), <http://www.fifa.com/worldcup/news/y=2010/m=12/news=russia-and-qatar-host-2018-and-2022-fifa-world-cups-respectively-1344971.html>.

98. Reider-Gordon, *supra* note 88, at 104.

99. *Corruption Perceptions Index 2016*, TRANSPARENCY INT’L, https://www.transparency.org/news/feature/corruption_perceptions_index_2016 (last visited Aug. 5, 2017).

100. *World Fact Book*, CIA, <https://www.cia.gov/library/publications/resources/the-world-factbook/geos/qa.html>.

indigenous football fan base. Daytime temperatures in the summer, the traditional time of year for scheduling the World Cup, often exceed 120 degrees Fahrenheit.¹⁰¹

The stunning announcement of the 2018 and 2022 World Cup hosts generated a media maelstrom. When the criticism of FIFA for these two choices did not abate, FIFA opened its well-worn “Corruption Crisis Playbook” and, as detailed in Section III, treated the media to a number of “much trumpeted reforms.”¹⁰²

E. The Department of Justice Indictments

The Department of Justice investigation into FIFA apparently began in 2010¹⁰³ and proceeded for five years prior to the May 2015 announcement of the first indictment.¹⁰⁴ Two senior football executives, Charles Blazer and Jose Hawilla are now known to have made secret plea deals and “cooperated” with the Department of Justice, for several years.¹⁰⁵

On May 27, 2015, Swiss authorities, at the request of the U.S. Federal Bureau of Investigation, conducted an early morning raid at Zurich’s luxury Baur au Lac hotel¹⁰⁶ where senior FIFA officials from around the world had gathered for FIFA’s annual Congress being held to elect the FIFA President. After the arrest of seven senior FIFA officials in Zurich and a raid on CONCACAF offices in Miami, Florida later the same day, United States Attorney General Loretta Lynch convened a press conference in New York where she revealed a forty-seven count indictment charging football officials, largely from the Western Hemisphere football confederations, CONCACAF and

101. FIFA EVALUATION GRP., 2022 FIFA WORLD CUP™ BID EVALUATION REPORT: QATAR 24 (2010), <http://www.fifa.com/mm/document/tournament/competition/01/33/74/56/b9qate.pdf>.

102. See discussion *infra* Section III.

103. Will Leitch, *The World Cup of Corruption*, WALL ST. J. (May 27, 2016, 3:56 PM), <https://www.wsj.com/articles/the-world-cup-of-corruption-1464379006>.

104. Andrew Martin & Tariq Panja, *Former Westchester Soccer Dad at Core of Sprawling FIFA Case*, BLOOMBERG (May 27, 2015, 2:01 PM), <http://www.bloomberg.com/news/articles/2015-05-27/former-westchester-soccer-dad-at-core-of-sprawling-fifa-scandal>.

105. *Nine FIFA Officials and Five Corporate Executives Indicted for Racketeering Conspiracy and Corruption*, *supra* note 22.

106. Consistent with FIFA’s practice of enjoying life to the fullest at others’ expense, senior FIFA officials enjoyed the \$4000 per night hospitality at the Baur au Lac hotel. The dawn raid by Swiss authorities was labeled the “Five-Star Takedown” in the press. Vernon Silver et al., *FIFA Busts at Baur au Lac: Inside the Five-Star Takedown*, BLOOMBERG (May 27, 2015, 10:57 AM), <http://www.bloomberg.com/news/articles/2015-05-27/fifa-busts-at-baur-au-lac-inside-soccer-s-five-star-takedown>.

CONMEBOL, with numerous crimes, including \$150,000,000 in bribes paid over a period of twenty-four years.¹⁰⁷ The charges included “RICO” counts (the Racketeering Influenced Criminal Organizations Act),¹⁰⁸ plus wire fraud,¹⁰⁹ money laundering,¹¹⁰ conspiracy to effect wire fraud¹¹¹ and among other offenses.¹¹² Lynch also announced that the Department of Justice had already secured guilty pleas from four individuals and two corporate legal entities.¹¹³ Blatter, who was seeking reelection to his fifth four-year term at the FIFA Congress, was not named in the indictment. He was reelected to his fifth four-year term two days after the raids, arrests and release of the indictment.¹¹⁴ Within a week, however, Blatter announced he would resign once an Extraordinary FIFA Congress¹¹⁵ elected a new President in February 2016.¹¹⁶

On December 3, 2015, on the occasion of a Zurich meeting of the FIFA Executive Committee, Swiss police, acting on behalf of the Department of Justice, once again raided the Baur au Lac hotel, arresting two additional FIFA officials. That same day the ninety-two count superseding Indictment¹¹⁷ was unsealed in New York, bringing the total number of individual and corporate defendants charged to forty-one.¹¹⁸

107. Edward Malnick et al., *FBI charts 24 years of football's bribery and corruption*, TELEGRAPH (May 27, 2015, 10:14 PM), <http://www.telegraph.co.uk/sport/football/fifa/11634704/FBI-charts-24-years-of-footballs-bribery-and-corruption.html>.

108. 18 U.S.C. § 1961 et seq. (2012).

109. *Id.* §§1343, 2 and 3551 et seq.

110. *Id.* §§1956(a)(2)(A), 2 and 3551 et seq.

111. *Id.* §§1349, 3551 et seq.

112. *Id.* §§1956(h), 3551 et seq.

113. *Nine FIFA Officials and Five Corporate Executives Indicted for Racketeering Conspiracy and Corruption*, *supra* note 22.

114. Owen Gibson, *Sepp Blatter to Resign as Fifa President After 17 Years in Role*, GUARDIAN (June 2, 2015, 3:28 PM), <https://www.theguardian.com/football/2015/jun/02/sepp-blatter-fifa-president-resigns>.

115. An Extraordinary FIFA Congress may be convened by the Council “at any time.” “The Council shall convene an Extraordinary Congress if one-fifth (1/5) of the member associations make such a request in writing. The request shall specify the items for the agenda. An Extraordinary Congress shall be held within three months of receipt of the request.” FIFA, FIFA STATUTES (Apr. ed. 2016), http://www.fifa.com/mm/Document/AFFederation/Generic/02/78/29/07/FIFASTatutswEBEN_Neutral.pdf.

116. Gibson, *supra* note 114.

117. *Nine FIFA Officials and Five Corporate Executives Indicted for Racketeering Conspiracy and Corruption*, *supra* note 22.

118. See Bruce W. Bean, *An Interim Essay on FIFA's World Cup of Corruption: The Desperate Need for International Corporate Governance Standards at FIFA*, 22 ILSA J. INT'L

II. CORPORATE GOVERNANCE

Part II reviews modern developments in corporate governance generally as well as specific efforts made in recent decades to reduce bribery and corruption in international business. The lack of success of the Foreign Corrupt Practices Act (“FCPA”) and similar laws in other nations designed to reduce bribery in international business is noted, and FIFA’s current governance status is described

A. Recent Changes to Standards of International Corporate Governance

Corporate governance has developed in connection with the conduct of for-profit corporations. Full disclosure, transparency, independence, gender equality, board refreshment, tenure limits, related party transactions, codes of ethics, sustainability and diversity are some of the more important concepts that have developed in the nearly five decades since Milton Friedman made “corporate social responsibility,” a key corporate buzzword.¹¹⁹

Corporate governance can be successful where there is accountability. FIFA’s stakeholders (i.e. its teams, fans, national associations, continental confederations and sponsors), however, have been perfectly unsuccessful in pressuring local football associations or FIFA itself to effectively reform football. One reason certainly is that there is no obvious means of doing so. Another may be acceptance of the way FIFA always operated as “normal.” In any case, we do know that fans everywhere can be uncritically loyal to “their” team.

B. Anti-Bribery Laws Affecting For-Profit Corporations

FIFA is the quintessential international enterprise. Former FIFA President Joao Havelange was fond of comparing the international scope of FIFA with the United Nations and noting that the three major powers in the world were the United States, the Soviet Union and FIFA!¹²⁰ Whether FIFA is seen as a supranational organization akin to the United Nations or merely as a Swiss non-governmental organization administering a vast, multibillion dollar global enterprise, it is clear that FIFA has not adopted the necessary modern mechanisms of corporate governance required to properly manage football. This is true despite decades of public awareness of FIFA’s self-dealing and

& COMP. L. 367, 369 (2016).

119. Milton Friedman, *A Friedman Doctrine—The Social Responsibility of Business Is to Increase Its Profits*, N.Y. TIMES MAG. 32 (Sept. 13, 1970).

120. Ziegler, *supra* note 68.

corrupt practices making manifest the need to reform FIFA.

The American practice of attempting to clean up world-wide corruption can be dated to 1977, when President Jimmy Carter signed the FCPA.¹²¹ The FCPA is one of the legacies of President Nixon's Watergate crisis.¹²² The FCPA criminalizes payments to foreign officials when made to "obtain or retain business." As the result of extensive diplomatic efforts by the United States, twenty years after the appearance of the FCPA, the nations of the Organization for Economic Cooperation and Development (the "OECD") finally produced the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the "OECD Convention"). The OECD Convention establishes obligations for parties to create national laws nearly identical to the FCPA. This Convention has been adopted by all OECD nations, including Switzerland, as well as six other nations, however, neither the FCPA nor the OECD Convention and the national laws adopted pursuant thereto have had any discernible impact on corruption.¹²³

121. Foreign Corrupt Practices Act of 1977, Pub. L. No. 95-213, 91 Stat. 1494, amended by Omnibus Trade & Competitiveness Act of 1988, Pub. L. No. 100-418, §§ 5001-03, 102 Stat. 1415, 1415-25 (codified as amended at 15 U.S.C. §§ 78m(b)(2), 78m(b)(3), 78dd-1, 78dd-2, 78ff (1994)).

122. Bruce W. Bean, *Hyperbole, Hypocrisy, and Hubris in the Aid-Corruption Dialogue*, 41 GEO J. INT'L L. 781, 800-01 (2010). See Stanley Sporkin, *The Worldwide Banning of Schmiegeld: A Look at the Foreign Corrupt Practices Act on its Twentieth Birthday*, 18 NW. J. INT'L L. & BUS. 269 (1998).

123. Corruption laws have certainly been good for lawyers, having created an entire industry referred to by Professor Michael Koehler and the *Wall Street Journal* as "FCPA Inc." but bribery and corruption have not been reduced. In addition to the benefits to government attorneys who later join private practice, the anti-corruption industry has created the prominent anti-corruption non-governmental organization, Transparency International ("TI"), founded in Berlin in 1993, and which now has operations in more than 100 countries. TI has as its vision of "a world in which government, business, civil society and the daily lives of people are free of corruption." The 2016 TI "Corruption Perceptions Index" begins by noting that 114 countries of the 168 rated score so low on this Index that TI concludes these nations have "serious levels of public sector corruption." The many billions of dollars expended to address corruption over the past forty years have simply not produced perceptible progress toward creating TI's world "free of corruption." *Corruption Perceptions Index 2016*, *supra* note 99. See, e.g., *Friday Roundup*, FCPA PROFESSOR (July 15, 2016), <http://fcpaprofessor.com/friday-roundup-197/#more-19643>. Consistent with the typical career path of DOJ FCPA enforcement attorneys, former DOJ FCPA Unit Chief Patrick Stokes is joining FCPA Inc. As noted in a Gibson Dunn release, Stokes is joining the firm as a partner. *Former Senior DOJ White Collar Prosecutor, Patrick Stokes, Joins Gibson Dunn in Washington, D.C.*, GIBSON DUNN (July 5, 2016), <http://www.gibsondunn.com/news/Pages/Former-Senior-DOJ-White-Collar-Prosecutor-Patrick-Stokes-Joins-Gibson-Dunn-in-Washington-DC.aspx>. I have long suggested a prohibition on DOJ (or SEC) FCPA enforcement attorneys with supervisory and discretionary authority from providing FCPA defense or compliance services for five years upon leaving government service. Indeed, the legitimacy and credibility of the DOJ and SEC's entire FCPA enforcement programs hinge on this policy proposal being adopted. See Mike

In the not-for-profit realm where FIFA thrives, there has been no meaningful attempt and absolutely no progress in curtailing corrupt behavior. This is true even in the United States, the global leader in anti-corruption rhetoric and prosecutions. No efforts have been made to address lack of accountability and waste in not-for-profit entities. The recent experience of the American National Red Cross in Haiti starkly makes this point.¹²⁴

C. FIFA and Corporate Governance

FIFA has grown into a billion-dollar enterprise, and has done so without developing the internal governance mechanisms essential to monitor and preclude the self-dealing and other forms of corruption

Koehler, *Lanny Breuer and Foreign Corrupt Practices Act Enforcement*, 8 WHITE COLLAR CRIME REP. 204 (2013); *Law Profs Seek to Jam the Revolving Door*, 25 CORP. CRIME REP. 3 (2011). In the above release, Stokes tenure as FCPA Unit Chief is measured quantitatively ("11 corporate FCPA resolutions with penalties of about \$1.3 billion, including the largest criminal FCPA fine and two of the 10 largest criminal FCPA resolutions to date ..."). See also *For-Profit Public Enforcement*, FCPA PROFESSOR (Mar. 11, 2015), <http://fcpaprofessor.com/for-profit-public-enforcement/> (providing further discussion on this common metric of measuring DOJ enforcement attorneys). See, e.g., Joe Palazzolo, *FCPA Inc.: The Business of Bribery: Corruption Probes Become Profit Center for Big Law Firms*, WALL ST. J. (Oct. 2, 2012), <http://www.wsj.com/articles/SB10000872396390443862604578028462294611352>; *Our Organisation*, TRANSPARENCY INT'L, <https://www.transparency.org/> (last visited Aug. 5, 2017). It is of course quite difficult to accurately measure corruption. Indeed, we are more likely to learn the alleged details of the sex lives of the rich and famous than to know facts about their finances. See Bruce W. Bean & Abbey L. Wright, *The Foreign Account Tax Compliance Act: American Legal Imperialism*, 21 ILSA J. INT'L & COMP. L. 333, 336 (2015).

124. Memorandum from Senator Chuck Grassley to Members of the Senate Judiciary and Finance Committees (June 15, 2016), <http://www.grassley.senate.gov/sites/default/files/constituents/2016-06-15%20Senator%20Grassley%20Red%20Cross%20Inquiry.pdf>. As for corruption in politics, no one actually expects politicians not to lie, obfuscate and "promise a bridge, even where there is no river." While we may wish for better, few expect political corruption to be addressed seriously in legislation successful politicians themselves must enact. In the United States this is so because, while politicians are nominally "accountable" to their constituents, our tradition remains that more than 90% of incumbents are reelected to Congress. This is true even when, as now, the approval rating for Congress as a whole is at 15% or less. As a result, because there is no accountability, or as John Wooden said, "When no one is watching," men succumb to the moral hazard of acting without concern for the consequences. Chris Cillizza, *People Hate Congress. But Most Incumbents Get Re-elected. What Gives?*, WASH. POST, (May 9, 2013), <https://www.washingtonpost.com/news/the-fix/wp/2013/05/09/people-hate-congress-but-most-incumbents-get-re-elected-what-gives/>. In the November 2016 U.S. elections, five seats in the 435 Member House of Representatives, and two in the 100 Member Senate changed parties. Louis Jacobson, *Congress Has 11% Approval Ratings but 96% Incumbent Reelection Rate, Meme Says*, POLITIFACT (Nov. 11, 2014, 4:56 PM), <http://www.politifact.com/truth-o-meter/statements/2014/nov/11/facebook-posts/congress-has-11-approval-ratings-96-incumbent-re-e/>. See also *Reelection Rates Over the Years*, OPENSECRETS.ORG, <https://www.opensecrets.org/overview/reelect.php> (last visited Aug. 5, 2017) (providing a graphical representation of reelection rate over the years).

now plaguing football. As one of the world's largest multinational enterprises, FIFA has 211 members¹²⁵ representing countries and territories where football is played. FIFA has also expanded its reach and now is responsible for futsal, an indoor football game, as well as international beach volleyball.¹²⁶

Football, starting with FIFA, urgently requires implementation of the standards of corporate governance that have developed over the past twenty-five years in the commercial world. We should appreciate that for decades FIFA was a small, insignificant entity overseeing the rules for football and coordinating the events leading up to its World Cup. Under Havelange and Blatter FIFA grew phenomenally. Sports sponsorships and TV broadcast rights brought billions to FIFA. FIFA's current staff exceeds 200 and its financial reports indicate a retained surplus of more than \$1.3 billion.¹²⁷ But both FIFA and football across the globe retain their antiquated practices and procedures for selecting leaders, controlling funds and conducting business. While the business of football developed under Havelange and Blatter, its management has not. FIFA and football now exist as demonstrative evidence of how not to permit a multibillion dollar business to operate.

One indication of how FIFA and football have not evolved, despite the great changes in football economics over recent decades, appears in the Indictment. Of those charged in the Indictment, only three are under fifty years of age (and these are sons of indicted FIFA officials) fifteen are now over seventy years old and three are over eighty; Blatter himself turned eighty in early 2017.¹²⁸ Many FIFA senior officials have enjoyed football leadership roles for decades. Blatter had been with FIFA for forty years before being banned in 2016.¹²⁹ Another defendant, Jack Warner from Trinidad & Tobago was a FIFA Vice President and Member of its Executive Committee for twenty-eight years, until 2011 when he escaped all FIFA sanctions for bribery and other charges by resigning.¹³⁰ The former Argentine superstar, Diego

125. The United Nations has just 193 members. *Growth in United Nations membership, 1945-present*, UNITED NATIONS, <http://www.un.org/en/sections/member-states/growth-United-nations-membership-1945-present/index.html> (last visited Aug. 5, 2017).

126. FIFA, *supra* note 8, art. 7.

127. FIFA reported reserves of \$1,340,000 at the end of 2015. 66TH FIFA CONGRESS, *supra* note 20.

128. *Sepp Blatter timeline: Fifa president's controversial career*, TELEGRAPH (Sept. 25, 2015, 4:26 PM), <http://www.telegraph.co.uk/sport/football/sepp-blatter/11891813/Sepp-Blatter-timeline-Fifa-presidents-controversial-career.html>.

129. *Id.*

130. Ben Rumsby, *Fifa scandal: Jack Warner Banned for life*, TELEGRAPH (Sept. 29, 2015, 12:54 PM), <http://www.telegraph.co.uk/sport/football/fifa/11898608/Fifa-scandal-Jack->

Maradona, has referred to FIFA officials as “dinosaurs who do not want to relinquish power” highlighting that it is not at all obvious that the former football players who have presided over FIFA for decades have the background or expertise to deal with managing the multinational, multibillion dollar enterprise football has become¹³¹

III. “IS IT MADNESS TO BELIEVE FIFA CAN REFORM ITSELF?”

A prominent international expert on anti-corruption and corporate governance has asked, “[i]s it madness to think FIFA can reform itself?”¹³² Given FIFA’s decades of scandals, highlighted most recently by the Indictment, the straight answer is “Yes, it is mad to believe in self-reform at FIFA!”

There is an incontrovertible need to impose the highest standards of international corporate governance on FIFA and football. FIFA’s unending scandals confirm the total absence of any semblance of such governance standards at FIFA. Much worse is the stark evidence, outlined in Sections IV and V, of FIFA’s open hostility to changes in the FIFA culture, a culture of corruption that includes its President, Executive Council, continental confederations and individual national football associations.

A. Corporate Governance under Blatter - a Charade? a Comedy? a Farce? — a Tragedy!

A brief review of scandals while FIFA was under Blatter’s leadership demonstrates not only the woefully inadequate state of corporate governance at FIFA but also the conclusion that all FIFA “reforms” have been part of an elaborate charade to make FIFA’s leaders look good while enabling them to continue to act “Just for Us.”

1. The 2006 World Cup - Germany

In July 2000, two years after Blatter succeeded Havelange as FIFA President, bidding for the right to host the 2006 World Cup was

Warner-to-be-banned-for-life.html.

131. FIFA has failed to develop the systems that modern for-profit public corporations have been required to implement to monitor and insure that its funds and activities comply with both applicable law and institutional best practices. Tom Killeen, *Is FIFA Finally Finished?*, YORKER (Sept. 3, 2016), <http://www.theyorker.co.uk/sport/fifa-finally-finished/>; *Top 10 List of the Internet World’s Most Popular Sports*, TOPEND SPORTS, <http://www.topendsports.com/world/lists/popular-sport/fans.htm> (last visited Dec. 20, 2016).

132. Symposium: Corruption in International Sports, U. MD. CAREY SCHOOL OF L. (Oct. 21, 2016).

held; Germany was selected over South Africa by a twelve to eleven vote of the FIFA Executive Committee.¹³³ In October 2015, four months after the first Department of Justice Indictment and accompanying arrests became public, Germany's *Der Spiegel* charged that a "slush fund" had been created fifteen years earlier by the head of Adidas, the German sports gear retailer and long-time FIFA sponsor, in order to pay the bribes necessary to insure Germany was selected.¹³⁴ After the usual run of "we never paid a bribe," "everything was done with honest means,"¹³⁵ followed by explanations, "well, yes we paid the \$8,000,000, but it was not a bribe",¹³⁶ an investigation was commenced by the FIFA Ethics Committee in March 2016, sixteen years after the alleged bribe was, or was not, paid.¹³⁷ In July 2016 FIFA "acted" by banning the sixty-five year-old Vice Chair of the Organizing Committee that won the bid for Germany in 2000, Wolfgang Niersbach, from football for one year.¹³⁸

2. The 2010 World Cup - South Africa

Although South Africa lost the designation as host of the 2006 World Cup to Germany, it was selected to host the 2010 World Cup.¹³⁹ South Africa allegedly arranged for a \$10,000,000 bribe to secure the votes required to be selected to host the 2010 World Cup.¹⁴⁰ Danny Jordaan, CEO of the South African World Cup Organizing Committee

133. *Host nation of 2010 FIFA World Cup – South Africa*, FIFA (May 15, 2004), <http://www.fifa.com/worldcup/news/y=2004/m=5/news=host-nation-2010-fifa-world-cuptm-south-africa-92544.html>.

134. *Germany Appears to Have Bought Right to Host 2006 Tournament*, SPIEGEL ONLINE (Oct. 16, 2015, 5:10 PM), <http://www.spiegel.de/international/world/documents-indicate-slush-fund-used-in-german-world-cup-bid-a-1058212.html>.

135. *Id.*

136. Marissa Payne, *Germany Says It Didn't Bribe FIFA Officials for 2006 World Cup, but Its Explanation Is Shaky*, WASH. POST (Oct. 23, 2015), https://www.washingtonpost.com/news/early-lead/wp/2015/10/23/germany-says-it-didnt-bribe-fifa-officials-for-2006-world-cup-but-its-explanation-is-shaky/?utm_term=.384495c9c9e6.

137. Andrew Soergel, *German Soccer Star Swept Up in Corruption Allegations*, U.S. NEWS (Mar. 22, 2016, 12:08 PM), <https://www.usnews.com/news/articles/2016-03-22/der-kaiser-franz-beckenbauer-latest-swept-up-in-fifa-corruption-probe>.

138. *Fifa hands one-year ban to former DFB president Wolfgang Niersbach*, *supra* note 87.

139. Jere Longman, *SOCCER; South Africa Is Names Host of 2010 World Cup*, N.Y. TIMES (May 16, 2004), http://www.nytimes.com/2004/05/16/sports/soccer-south-africa-is-named-host-of-2010-world-cup.html?_r=0.

140. Daniel Rivero, *How South Africa's Bid To Host The 2010 World Cup Was Allegedly Built On Bribes*, FUSION TV (May 27, 2015, 7:06 PM), <http://fusion.net/story/140533/how-south-africas-bid-to-host-the-2010-world-cup-was-allegedly-built-on-bribes/>.

is said to have been involved.¹⁴¹ As with Germany for the 2006 World Cup, the story ran that “the bribe was not paid,”¹⁴² or “the money paid was not a bribe,”¹⁴³ or “yes, it was paid, but it was authorized by the government.”¹⁴⁴ In March 2016, after more than ten years had passed FIFA confirmed that a bribe had been paid.¹⁴⁵

3. Blatter’s Response to the 2010 Furor: the “Roadmap to Reform”

In the media storm that followed the December 2010 decision to have Russia and Qatar host the World Cups in 2018 and 2022, Sepp Blatter choreographed an elaborate series of highly publicized “reform” initiatives. Following his June 2011 reelection as FIFA President, Blatter unveiled a “Roadmap to FIFA Good Governance.”¹⁴⁶ His “Roadmap” included a broad array of very public steps designed to demonstrate institutional renewal at FIFA.¹⁴⁷ Blatter’s multi-pronged “reform” effort involved Transparency International, the Basel Institute of Governance and internal “task forces.”¹⁴⁸ Each group was asked to address internal corporate governance at FIFA. After much FIFA-generated sound and fury, we find there was very little effective reform.

4. Transparency International’s “Safe Hands” Report

Blatter invited Transparency International (“TI”), a world leader in tracking and addressing global corruption, to propose changes in FIFA’s governance practices. TI prepared a corporate governance reform report entitled “Safe Hands: Building Integrity and

141. *Id.*

142. Morena Mothupi, *First on EWN: Danny Jordaan Denies FIFA Corruption Claims, Defends Linda Mti*, EYEWITNESS NEWS (June 26, 2016), <http://ewn.co.za/2016/06/29/First-on-EWN-Danny-Jordaan-denies-corruption-allegations-defends-Linda-Mti>.

143. Rivero, *supra* note 140.

144. *Jordaan Knew About \$10m, but Denies Bribery*, ENCA (June 1, 2015), <https://www.enca.com/south-africa/jordaan-knew-about-10m-denies-bribery>.

145. Jean Smyth, *FIFA Confirms 2010 World Cup Bribes Were Paid*, EYEWITNESS NEWS (Mar. 16, 2016), <http://ewn.co.za/2016/03/16/Fifa-confirms-2010-World-Cup-bribes-were-paid>.

146. PROPOSALS BY THE FIFA PRESIDENT FOLLOWING THE 61ST FIFA CONGRESS 2011 IN ZURICH (Oct. 21, 2011)

147. *Id.*

148. These were: a Task Force Ethics Committee, a Task Force Revision of Statutes, and a Task Force Transparency & Compliance. Each of these was led by a FIFA insider. *FIFA Executive Committee Agrees Major Governance Reforms & Ethics Structure*, FIFA (Mar. 30, 2012), <http://www.fifa.com/about-fifa/news/y=2012/m=3/news=fifa-executive-committee-agrees-major-governance-reforms-ethics-structur-1608553.html>.

Transparency at FIFA.”¹⁴⁹ The TI report proposed a list of standard governance measures: independent investigations of all past corruption allegations; clear rules going forward regarding whistle blowing and investigations by the FIFA Ethics Committee;¹⁵⁰ steps to insure transparency and good governance; term limits for senior officials; a conflict of interest policy; and independent members on crucial committees such as the FIFA Ethics Committee.

TI also proposed that in the absence of FIFA accountability to a higher authority, an oversight group composed of various stakeholders should be created.¹⁵¹ Such a body would be totally independent of FIFA and could be composed of representatives of fans, football federations, women’s football, sponsors, players, referees, etc. TI cited the experience of the International Olympic Committee which created a reform group in the wake of the bribery scandal relating to the 2002 Winter Olympics in Salt Lake City, Utah.¹⁵²

5. Basel Institute of Governance

In August 2011 Blatter requested that Mark Pieth, a professor at the Basel Institute of Governance, propose corporate governance reforms for FIFA.¹⁵³ Pieth has substantial experience and an outstanding international reputation as an expert on bribery, corruption, money laundering and related matters.¹⁵⁴ Pieth submitted a report to FIFA in September 2011 entitled “Governing FIFA:

149. TRANSPARENCY INT’L, *SAFE HANDS: BUILDING INTEGRITY AND TRANSPARENCY AT FIFA* (2011).

150. A FIFA Ethics Committee was established under Blatter in June 2006, apparently to address issues relating to bribery of referees in Italy and elsewhere. This Ethics Committee replaced an earlier FIFA committee, the Committee for Ethics and Fair Play, which was renamed the Committee for Fair Play and Social Responsibility at the FIFA Congress held in Munich in June 2006. 57TH FIFA CONGRESS, *ACTIVITY REPORT 2007* (2007).

151. TRANSPARENCY INT’L, *supra* note 149, at 3.

152. *FIFA Acknowledges Report by TI*, FIFA (Aug. 16, 2011), <http://www.fifa.com/about-fifa/news/y=2011/m=8/news=fifa-acknowledges-report-1493338.html>. As described later in this article, this favorable result at the International Olympic Committee came about because the U.S. Congress had demanded adoption of these reforms and threatened legislation to prevent American companies from supporting the IOC.

153. *Prof. Mark Pieth presented as chairman of Independent Governance Committee*, FIFA (Nov. 30, 2011), <http://www.fifa.com/governance/news/y=2011/m=11/news=prof-mark-pieth-presented-chairman-independent-governance-committee-1549900.html>.

154. From 1990 through 2013 Professor Pieth was chair of the OECD’s Working Group on Bribery in International Business Transactions, the group that conducts compliance reviews of the parties to the OECD anti-bribery convention. This convention, the “OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions” has now been ratified by forty-one nations, including all major trading countries except China. See OECD CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS (1997).

Concept Paper and Report.”¹⁵⁵ This report notes the growth of FIFA from a small private organization that organized matches and the rules of the game to a billion dollar commercial entity.¹⁵⁶ Pieth concluded that the real authority within FIFA was with the Executive Committee and the President and that its internal organizational structure has not evolved as FIFA was transformed into an entity with regulatory, organizational and commercial functions.¹⁵⁷

6. FIFA Task Forces¹⁵⁸

In August 2011 Blatter caused FIFA to establish several internal task forces: the Task Force Ethics Committee; the Task Force Revision of Statutes, and the Task Force Transparency & Compliance.¹⁵⁹ These Task Forces, which were staffed by FIFA insiders, coordinated their activities with Mark Pieth of the Basel Institute of Governance.¹⁶⁰ At the July 2012 FIFA Congress the Ethics Committee was reorganized by amending the FIFA Statutes to split the Committee into the Investigative Chamber and Adjudicatory Chamber, each to be led by “independent” persons.¹⁶¹ The FIFA Ethics Code was also substantially amended.¹⁶² While the previous version of the Ethics Code contained twenty-one Articles,¹⁶³ the revised 2012 version had eighty-eight articles with many nice-sounding words.¹⁶⁴ These were definitely good-looking corporate governance measures; but as we shall see, they have not had a meaningful impact on FIFA.

7. The Independent Governance Committee

One result of the work of the Basel Institute of Governance was an agreement with Blatter to create an Independent Governance Committee¹⁶⁵ (“IGC”) to take an in depth look at FIFA, its organization

155. MARK PIETH, GOVERNING FIFA CONCEPT PAPER AND REPORT, 19 SEPTEMBER 2011 (2011).

156. *Id.*

157. *Id.*

158. 57TH FIFA CONGRESS, ACTIVITY REPORT 2007, *supra* note 150.

159. A fourth Task Force, “Task Force Football 2014,” focused on Laws of the Game, refereeing, competition regulations, women’s football, medical matters, and fair play. *FIFA Executive Committee Agrees Major Governance Reforms & Ethics Structure*, *supra* note 148.

160. See discussion *infra* Section IV.D.4.c.

161. *Independent Ethics Committee*, FIFA, <http://www.fifa.com/about-fifa/committees/committee=1882034/index.html> (last visited Aug. 5, 2017).

162. FIFA, FIFA CODE OF ETHICS (2012 ed. 2012).

163. FIFA, FIFA CODE OF ETHICS (2009 ed. 2009).

164. FIFA CODE OF ETHICS (2012 ed. 2012), *supra* note 162.

165. This committee had previously been referred to in FIFA documents as the “solutions committee,” *Mark Pieth to Lead ‘solutions committee,’* ESPN (Nov. 23, 2011),

and procedures and, in connection with FIFA's internal Task Forces, to fully consider what further changes FIFA should make.

The IGC, headed by Mark Pieth, was established in November 2011.¹⁶⁶ Six of the initial thirteen members of the IGC were nominally independent; the remaining seven represented various FIFA constituencies, sponsors, players, and the football leagues and associations.¹⁶⁷ The IGC adopted a fine-sounding Charter outlining its responsibilities.¹⁶⁸ While the Charter referred to the independence of the IGC, its authority with respect to corruption was limited. For example, Article 2 provides in part:

FIFA has delegated to the IGC the power and authority necessary to discharge its purpose, including but not limited to the right to assess FIFA's response to allegations of past and current misconduct, and, if appropriate, to recommend further investigation.¹⁶⁹

"Assessing" past misconduct did not include actually investigating allegations of corruption as TI had recommended in its "Safe Hands" report.¹⁷⁰ When TI learned that this "independent" committee would not be able to look into past reported abuses, that FIFA was to pay Committee Members \$5000 per day for work on the IGC and that as Chairman, Mark Pieth would also be paid an additional \$128,000,¹⁷¹ it promptly terminated its participation in this FIFA charade.

The IGC reviewed and assessed the work of the internal FIFA Task Forces, the TI "Safe Hand's" report and Mark Pieth's earlier

http://www.espn.com/sports/soccer/news/_/id/7273272/swiss-professor-mark-pieth-lead-fifa-solutions-committee. The committee was also known as the "Committee Good Governance." PROPOSALS BY THE FIFA PRESIDENT FOLLOWING THE 61ST FIFA CONGRESS 2011 IN ZURICH, *supra* note 146. At one point Henry Kissinger was apparently approached to chair this committee. *Blatter Tips Henry Kissinger for Role on FIFA 'Solutions Committee,'* CNN (June 2, 2011, 9:22 PM), <http://edition.cnn.com/2011/SPORT/football/06/02/football.fifa.blatter.kissinger/>.

166. INDEP. GOVERNANCE COMM., FIRST REPORT BY THE INDEPENDENT GOVERNANCE COMMITTEE TO THE EXECUTIVE COMMITTEE OF FIFA (2012).

167. *Id.*

168. *Independent Governance Committee Charter*, BASEL INSTITUTE ON GOVERNANCE, <https://web.archive.org/web/20140427073630/http://www.baselgovernance.org/gov/governance-in-sports/fifa/independent-governance-committee-charter/> (captured Apr. 27, 2014).

169. *Id.*

170. TRANSPARENCY INT'L, *supra* note 149, at 2.

171. *Parliamentary Questions*, EUROPEAN PARLIAMENT (Dec. 20, 2011), <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+E-2011-012045+0+DOC+XML+V0//EN>.

proposals and made a number of its own proposals and recommendations.¹⁷² The IGC did not control the FIFA reform process, however, and, as we shall see, the IGC was not at all satisfied with the results of its two-year effort.

The IGC published its First Report¹⁷³ in March 2012, just four months after it was organized. In this Report the IGC concluded that, even with the narrow scope of its limited authority to assess earlier scandals, things were not well.¹⁷⁴ For example, the First Report stated:

Overall, the answers by FIFA regarding the handling of alleged misconduct were not fully satisfactory to the IGC. Based on the discussion of specific examples, FIFA has – in the opinion of the IGC --- shown a lack of pro-active and systematic follow---up on allegations. In some instances, allegations were insufficiently investigated.¹⁷⁵

Additionally, the First Report included a number of basic recommendations for updating FIFA's organization and processes, such as the creation of an Audit & Compliance Committee, adding independent chairs of important independent committees and including them in Executive Committee meetings, creating term limits, and creating financial controls appropriate for a modern billion dollar multinational enterprise.¹⁷⁶

At the FIFA Congress in 2012 a few of these proposals were adopted by FIFA.¹⁷⁷ One revealing amendment was a quite modest change to the all-male nature of FIFA. Article 30 of the FIFA Statutes was amended to add "the Representative of Women's Football" to the Executive Committee."¹⁷⁸ Described as "the female member" on the all-male FIFA Executive Committee,¹⁷⁹ this woman was to be elected by the FIFA Congress.¹⁸⁰ While this change in FIFA's organization

172. INDEP. GOVERNANCE COMM., *supra* note 166, at 5.

173. *Id.*

174. *Id.*

175. *Id.* art. 2.2.

176. *Id.*

177. FIFA, *supra* note 8.

178. *Id.* at art. 30.3 (stating "The Representative of Women's Football shall be elected by the Congress. The Representative of Women's Football shall be a woman. The mandate shall be for a period of four years, beginning after the end of the Congress at which the Representative of Women's Football was elected.").

179. *Id.*

180. Alexandra Wrage, a former member of the IGC has described FIFA as "an outdated men's club." Alexandra Wrage, *FIFA's Rotten Reform Record*, FORBES (Apr. 23, 2013, 10:11

was a remarkably small step for the second decade of the twenty-first century, it did represent actual, if long overdue, progress for FIFA, the all-male organizer of global football. Indeed, for FIFA and its then seventy-five-year old President Blatter, this was quite a remarkable step forward.¹⁸¹

Blatter dealt with these IGC and Task Force recommendations by requiring each of the FIFA continental confederations to consider them. The European confederation, UEFA, issued a press release in January 2013, following a meeting of all of its fifty-three national football association members. UEFA announced that its Members by “unanimous declaration” explicitly, and none too subtly, rejected several of the reform proposals.¹⁸² Two of the more important proposals UEFA rejected were: a requirement that Executive Committee Members elected by the Confederations be subjected to “integrity checks” by FIFA and then confirmation by the entire FIFA Congress; and term limits for Executive Committee members.¹⁸³ As the most profitable and powerful Confederation within the FIFA empire,¹⁸⁴ UEFA’s rejection of recommendations designed to bring the bare beginnings of accountability to FIFA presented a serious obstacle to meaningful reform.

The IGC published its Second Report in April 2013 after its first full year of operations.¹⁸⁵ It noted that over the prior year FIFA had taken “the first essential steps” toward reform by revamping the Ethics

AM), <http://www.forbes.com/sites/alexandrawrage/2013/04/23/fifas-reform-record/#3d18b07f7545>.

181. Adding one woman to an Executive Committee of twenty-four men, can perhaps be best understood in the context of an earlier comment Sepp Blatter had made in 2004. Describing how women’s football could be made more appealing to the public and thus attract larger crowds, Blatter is reported to have said: “They could, for example, have tighter shorts... Let the women play in more feminine clothes like they do in volleyball.” *FIFA Lawyers: Blatter, Valcke and Kattner Paid Themselves \$80M*, CNN (June 3, 2016, 5:38 PM), <http://edition.cnn.com/2016/06/03/football/fifa-sepp-blatter-bonuses/>.

182. UEFA’s announcement specifically stated: “The 53 European FIFA Member Associations give a mandate to the UEFA President, the European members of the FIFA Executive Committee and the UEFA General Secretary to present this declaration to FIFA as the clear position of the fifty-three European FIFA Member Associations.” *European Associations Issue Unanimous Declaration*, EAFA (Jan. 24, 2013, 6:00 PM), <http://www.uefa.org/mediaservices/mediareleases/newsid=1913701.html>; *FIFA Lawyers: Blatter, Valcke and Kattner Paid Themselves \$80M*, CNN (June 3, 2016, 5:38 PM), <http://edition.cnn.com/2016/06/03/football/fifa-sepp-blatter-bonuses/>.

183. *European Associations Issue Unanimous Declaration*, *supra* note 182.

184. Mike Ozanian, *The World’s Most Valuable Soccer Teams 2016*, FORBES (May 11, 2016, 9:14 AM), <http://www.forbes.com/sites/mikeozanian/2016/05/11/the-worlds-most-valuable-soccer-teams-2016/#6c21e45b2d04>

185. INDEP. GOVERNANCE COMM., SECOND REPORT BY THE INDEPENDENT GOVERNANCE COMMITTEE TO THE EXECUTIVE COMMITTEE OF FIFA (2013).

Committee and creating a “credible” Audit & Compliance Committee.¹⁸⁶ The IGC emphasized in its first paragraph that FIFA needed fundamental reform and that “[t]he IGC expects the members of the Executive Committee to personally and actively support the project in their respective spheres.”¹⁸⁷ The IGC felt compelled to include this not-so-subtle exhortation because of the resistance to change it had encountered within FIFA. A Final Report by the IGC to the Executive Committee of FIFA was published on April 22, 2014.¹⁸⁸ In politically correct, polite language, the IGC Final Report restated its reason for being, its activities and recommendations.¹⁸⁹ The Final Report emphasized the resistance to governance reform revealed by the UEFA “declaration.” For example, the Final Report stated:

However, the IGC was surprised and actually worried about the seriousness of some of the key opinion leaders in football, when a declaration of the Presidents and Secretaries General of all fifty-three Member Associations of UEFA was published on January 24, 2013, which fell short of fundamental requirements of modern governance in essential parts.¹⁹⁰

It is even more significant for the prospects for reforming FIFA that the Secretary General of UEFA at the time of this declaration and the man who presided over the UEFA meeting that adopted this resolution was Gianni Infantino, the current President of FIFA.¹⁹¹

Discussing UEFA’s opposition to the proposed “integrity checks” by FIFA, the IGC referred to actions taken that “substantially diluted” the IGC proposal, thus resulting in a “suboptimal outcome.”¹⁹² Additionally, the IGC noted that there were no truly independent members of the FIFA Executive Committee and that a fundamental tenet of modern corporate governance, transparency of senior officials’

186. *Id.* at 3.

187. *Id.*

188. INDEP. GOVERNANCE COMM., FINAL REPORT BY THE INDEPENDENT GOVERNANCE COMMITTEE TO THE EXECUTIVE COMMITTEE OF FIFA (2014), https://www.baselgovernance.org/sites/collective.localhost/files/documents/final_report_by_igc_to_fifa_exco_en.pdf; *Press Release, Basel Institute on Governance, IGC Issues Final Report* (Apr. 23, 2014), https://www.baselgovernance.org/sites/collective.localhost/files/documents/igc_issues_final_report.pdf.

189. INDEP. GOVERNANCE COMM., SECOND REPORT, *supra* note 185.

190. *Id.* at 10.

191. *European Associations Issue Unanimous Declaration*, *supra* note 182.

192. INDEP. GOVERNANCE COMM., FINAL REPORT, *supra* note 188, at 10.

remuneration, had not been achieved.¹⁹³

The IGC Final Report does declare that “FIFA has successfully started its reform process.”¹⁹⁴ The IGC pointed with pride to the fact that the Ethics Committee’s Investigatory Chamber head was investigating the allegations of corruption made with respect to the selection of Russia and Qatar as hosts for the 2018 and 2022 World Cups.¹⁹⁵ The IGC urged FIFA to use this investigation to determine the truth of these allegations, stating: “The Ethics Committee should not rest until there is a conclusive answer.”¹⁹⁶ Further, the Ethics Committee investigation of these allegations is “the opportunity for FIFA to demonstrate that they have learned the lessons of the past and are determined to see a transparent and open organization setting an example of the highest ethical standards in the interests of the game and of the wider public interest.”¹⁹⁷ One final conclusion of the IGC stated:

In order to promote genuine cultural change, the IGC believes that some outside independent body should continue to work with FIFA to ensure that the road to reform is completely finished. This outside body can be small but must be adequately resourced to do the work.¹⁹⁸

Blatter declared his “Roadmap to Reform” successful in June 2013, stating: “We have weathered the storm.”¹⁹⁹ The Ethics Committee had been split into two chambers and truly independent leaders were appointed to head both the Investigative and the Adjudicative Chambers.²⁰⁰ And, just as important, an authentically independent Domenico Scala had been hired as the Chair of the Audit and Compliance Committee.²⁰¹ While these actions “looked good” and were potentially promising, as we shall see, these moves were merely

193. *Id.*

194. *Id.*, at 13.

195. *Id.* at 13-15.

196. *Id.* at 14.

197. *Id.*

198. INDEP. GOVERNANCE COMM., FINAL REPORT, *supra* note 188, at 15.

199. Joshua Robinson, *FIFA Slowly Sails Toward Reform*, WALL ST. J. (June 4, 2013, 8:01 AM), <http://www.wsj.com/articles/SB10001424127887324063304578521301415971928>.

200. *Independent Ethics Committee*, *supra* note 161.

201. *New Audit and Compliance Committee Holds First Meeting*, FIFA (Aug. 10, 2012), <http://www.fifa.com/about-fifa/news/y=2012/m=8/news=new-audit-and-compliance-committee-holds-first-meeting-1678423.html>. *But see, infra* note 290 (recounting when Scala resigned in disgust as the result of actions taken by the new FIFA President in May 2016).

part of a charade and have led nowhere.²⁰²

In commenting on the work of the IGC, Guido Tognoni, a former FIFA Secretary General, told a Swiss television station that, “Mark Pieth has good intentions but to me he’s like Sepp Blatter’s poodle. He must bark loud but he’s not allowed to bite. He had a promising approach but, of course, he’s banging his head against a block of granite.”²⁰³

C. *The Garcia Report*

As noted, FIFA’s restructuring of the Ethics Committee into two “chambers” at the recommendation of the IGC required that two authentically “independent” experts be identified to lead them. Michael J. Garcia, a former United States Attorney for the Southern District of New York, was hired as Chairman of the Investigative Chamber.²⁰⁴ Dr. Hans-Joachim Eckert, a German judge, was hired as Chairman of the Adjudicatory Chamber.²⁰⁵ As had been emphasized in the Final Report of the IGC, Garcia and the Investigatory Chamber conducted an investigation into the bidding process that in 2010 had resulted in the selection of Russia and Qatar and to determine whether the selection of Russia and Qatar as World Cup host nations had been compromised in some way.²⁰⁶

Following an eighteen-month investigation, pursuant to the procedures established by FIFA, Garcia submitted the Investigatory Chamber’s confidential, 450-page Report of Findings to Eckert’s Adjudicatory Chamber. Eckert did not release the Garcia Report. In its place he prepared a forty-two page summary.²⁰⁷ The summary

202. See Owen Gibson, *Anti-bribery Expert Resigns in Frustration at Lack of Fifa Progress*, GUARDIAN (Apr. 22, 2013), <https://www.theguardian.com/football/2013/apr/22/anti-bribery-resigns-fifa>.

203. Simon Bradley, *‘A Culture of Change Is Seeping into FIFA,’* SWISSINFO (May 31, 2013, 8:55 PM), http://www.swissinfo.ch/eng/culture/football-reforms_-a-culture-of-change-is-seeping-into-fifa-/36006902.

204. *Fifa Appoints Michael J Garcia to Investigate Football Corruption*, GUARDIAN (July 17, 2012, 13:04 PM), <https://www.theguardian.com/football/2012/jul/17/fifa-michael-j-garcia-football-corruption>.

205. *Chairmen of Ethics Committee Announced and new Code of Ethics Approved*, FIFA (July 17, 2012), <http://www.fifa.com/about-fifa/news/y=2012/m=7/news=chairmen-ethics-committee-announced-and-new-code-ethics-approved-1664989.html>.

206. *Statement of the Chairman of the Adjudicatory Chamber for the FIFA Ethics Committee on the Report on the Inquiry into the 2018/2022 FIFA World Cup Bidding Process* (Nov. 13, 2014), http://www.fifa.com/mm/document/affederation/footballgovernance/02/47/41/75/statementc_hairmanadjcheckert_neutral.pdf [hereinafter *Eckert Statement*].

207. *Id.*

stated that the Garcia investigation, together with a prior Ethics Committee investigation, “established a *prima facie* case that serious violations of bidding rules and the FIFA Code of Ethics have occurred.”²⁰⁸ Prominently, the Eckert summary described an incident where a Qatari businessman, who was also a FIFA official, had distributed envelopes containing \$40,000 in cash to voting members of the FIFA Executive Committee.²⁰⁹

Notwithstanding this “*prima facie*” case and the stark details of the Qatari envelopes of cash, Eckert announced that the Ethics Committee had concluded that the selection of Russia and Qatar for the 2018 and 2022 World Cups was not the result of bribery and corruption.²¹⁰ Eckert’s explanation for this surprising conclusion stated: “To assume . . . that envelopes full of cash are given in exchange for votes on a World Cup host is naïve.”²¹¹ Garcia reacted by describing Eckert’s conclusions as “materially incomplete and erroneous representations of facts and conclusions.” Garcia demanded the publication of his entire report. When FIFA refused, Garcia resigned in disgust.²¹² Garcia’s comments at the time are revealing:

The [FIFA] investigation and adjudication process operates in most parts unseen and unheard. That’s a kind of system which might be appropriate for an intelligence agency but not for an ethics compliance process in an international sports institution that serves the public and is the subject of intense public scrutiny . . . Transparency is not intended to embarrass certain

208. *Id.* at 23-24.

209. *FIFA bribery scandal: The \$40,000 ‘bung’ at the heart of football’s corruption storm*, DAILY RECORD (May 31, 2013 6:37 AM), <http://www.dailyrecord.co.uk/news/uk-world-news/fifa-bribery-scandal-the-40000-bung-1104320>.

210. *Eckert Statement*, *supra* note 206, at 7–8.

211. *Id.* at 41. Michael Garcia is hardly naïve. Now a judge on New York State’s highest court Garcia is the former federal prosecutor who brought down New York’s sitting governor, Elliot Spitzer, and prosecuted the 1993 World Trade Center bombers as well as those involved in the bombing of the U.S. embassies in Kenya and Tanzania. *Honorable Michael J. Garcia*, CT. APPEALS ST. N.Y., <https://www.nycourts.gov/ctapps/jgarcia.htm> (last visited Dec. 21, 2016).

212. Six months after Garcia resigned as Chair of the Investigative Chamber of the FIFA Ethics Committee, on May 27, 2015, the initial Department of Justice Indictment was released to the public. Two days later Sepp Blatter was reelected to his fifth four-year term as FIFA President. On June 2, 2015 Blatter announced that, while he was not guilty of any wrongdoing, he would resign as FIFA President once the Extraordinary Congress of FIFA members elected a new President. Jere Longman, *FIFA Investigator Michael J. Garcia Quits in Dispute over Report*, N.Y. TIMES (Dec. 17, 2014), <http://www.nytimes.com/2014/12/18/sports/soccer/michael-j-garcia-resigns-as-fifa-prosecutor-in-protest.html>.

individuals by airing dirty laundry or to harm the organization by showing what went wrong, it's the opposite. Where the institution has taken significant steps forward and made that progress transparency provides evidence of that to the public.²¹³

London's *Independent* newspaper commented on Eckert's unlikely conclusion, stating: "FIFA has descended yet further into farce."²¹⁴ The governance charade or farce repeatedly perpetrated by FIFA has been described as the difference between "good governance" and "good-looking governance."²¹⁵

D. How Eager is FIFA to Reform?

Professor Roger Pielke, Jr. has analyzed the TI's Safe Hands Report, the separate Mark Pieth report and the IGC Reports, each of which were genuine efforts to introduce honest, effective corporate governance to FIFA. Pielke notes that of a total of fifty-nine recommendations for reform in these studies, FIFA adopted a grand total of seven, with ten more partially adopted.²¹⁶ The remaining forty-two were completely ignored.²¹⁷ As one of its independent members declared shortly after resigning from the IGC: "Opportunities for change have been evaded, finessed or re-directed...."²¹⁸

1. The Carrard Committee

Immediately following the May 2015 Department of Justice indictment and shortly after he had stated he would resign, Blatter met with Domenico Scala, the independent Chair of the Audit & Finance Committee, to consider how to introduce further "reforms." On the meeting, Blatter commented: "I had a good, constructive meeting with Mr. Scala to establish a framework for action [sic] and a timetable. I am pleased to take advice and guidance from Mr. Scala, I want a comprehensive programme of reform and I am very aware that only

213. *Chief Ethics Investigator Michael Garcia Criticizes FIFA's Culture of Secrecy*, FOX SPORTS (Oct. 13, 2014, 11:24 AM), <http://www.foxsports.com/soccer/story/chief-ethics-investigator-michael-garcia-criticizes-fifa-s-culture-of-secrecy-101314>.

214. Tom Peck, *Eckert: FIFA Summary Was Word for Word*, INDEPENDENT (Nov. 14, 2015), <http://www.independent.co.uk/sport/football/news-and-comment/eckert-fifa-summary-was-word-for-word-9862663.html>.

215. Andrews & Harrington, *supra* note 17, at 194.

216. Roger Pielke, Jr., *A Deeper Look at FIFA's Reform Scorecard*, PLAY GAME (Oct. 15, 2013), <http://www.playthegame.org/news/news-articles/2013/a-deeper-look-at-fifa%E2%80%99s-reform-scorecard/>.

217. *Id.*

218. Wrage, *supra* note 180.

the FIFA Congress can pass these reforms.”²¹⁹

Following an Executive Committee meeting held in June 2015 Blatter proudly announced yet another reform effort, this one he labeled the “Task Force - Reforms.”²²⁰ FIFA announced that this effort was to be led by “an independent person outside the world of football.”²²¹ This new effort, however, would also be “overseen by the independent bodies of FIFA, namely the Audit & Compliance, the Disciplinary and the Ethics Committees.”²²² In August 2015 FIFA announced that the independent chair of this latest of FIFA’s unending string of highly publicized, impotent reform efforts, was to be seventy-seven year old Dr. Francois Carrard, a Swiss lawyer who had previously served as Director General of the International Olympic Committee from 1989 to 2003.²²³

Carrard renamed the committee the “2016 FIFA Reform Committee” which concluded its work in the fall of 2015 and presented its report to the December 2015 meeting of the FIFA Executive Committee.²²⁴ Dr. Carrard’s presentation to the Executive Committee was typically FIFA-slick, containing all the right buzzwords of accepted international corporate governance: “Responsibility; Humility; Tone at the Top; Respect; and Candour.”²²⁵ Carrard noted that his Committee had heard from Domenico Scala, Chair of the Audit & Compliance Committee; had considered the reports of the IGC, TI and an outside group supported by the Danish government, Play the Game;²²⁶ and had “engaged with the commercial partners of FIFA.”²²⁷ Despite claiming to have “engaged with the commercial partners,” on

219. *President Blatter: Reform Work Has Already Started*, FIFA.COM (Jun 4, 2015), <http://www.fifa.com/governance/news/y=2015/m=6/news=president-blatter-reform-work-has-already-started-2618966.html>.

220. *Task Force “Reforms” to Be Chaired by Independent Person from Outside Football*, FIFA.COM (July 27, 2015), <http://www.fifa.com/governance/news/y=2015/m=7/news=task-force-reforms-to-be-chaired-by-independent-person-from-outside-fo-2668178.html>.

221. *Id.*

222. *Id.*

223. *Biography Chairman 2016 FIFA Reform Committee François Carrard*, http://resources.fifa.com/mm/document/affederation/committees/02/67/03/48/12.8.15.biodrcarrard_ok_neutral.pdf (last visited Dec. 21, 2016); Simon Evans, *FIFA Reform Chief Carrard Says Criticism of Blatter ‘Unfair,’* REUTERS (Aug. 23, 2015, 2:32 PM), <http://www.reuters.com/article/us-soccer-fifa-blatter-carrard-idUSKCN0QS0TN20150823>.

224. *Executive Committee Meeting*, FIFA (Dec. 2, 2015), http://resources.fifa.com/mm/document/affederation/footballgovernance/02/74/17/96/exco_reformcommitteefinal_neutral.pdf.

225. *Id.*

226. PLAY GAME, <http://www.playthegame.org/> (last visited Dec. 21, 2016).

227. 2016 FIFA REFORM COMM., 2016 FIFA REFORM COMMITTEE REPORT (2015).

December 1, 2015, one day prior to Carrard's presentation to the FIFA Executive Committee, five major FIFA sponsors²²⁸ published an open letter to the FIFA Executive Committee timidly noting:

We want to emphasize to you the values and characteristics that we believe should be incorporated through the reforms. Transparency, accountability, respect for human rights, integrity, leadership and gender equality are crucial to the future of FIFA. Reforms can set the proper framework for these characteristics, but a cultural change is also needed.²²⁹

This letter commands the inference that while the initial publicly declared intent was to include sponsors on the Reform Committee,²³⁰ these major sponsors did not believe they had been heard. As originally announced in August, the Carrard reform committee was to include two "representatives appointed by FIFA Commercial partners."²³¹ Where were these representatives? They never became members of this committee. Carrard's statement that his Committee had "engaged with" the sponsors was apparently not the same for these sponsors as actually being afforded the opportunity to actually contribute to the Committee's work.

The Carrard Report was comprehensive. It "looked good." It addressed financial transparency, related party transactions, and how grants to member associations should be determined and administered.²³² The Report restated the prior IGC proposal for term limits for the President and Executive Committee Members so recently opposed by UEFA, and again proposed transparency of the compensation FIFA paid to senior FIFA personnel and Executive Committee members.²³³ The Carrard Report also recommended that each Continental Confederation be required to elect at least one woman

228. AB InBev (Budweiser), Adidas, the Coca-Cola Company, McDonald's and Visa signed this letter. Other major sponsors, Russia's GazProm and South Korea's Hyundai were not associated with this open letter.

229. Coca-Cola Co., *Open Letter to the FIFA Executive Committee*, COCA-COLA JOURNEY (Dec. 1, 2015), <http://www.coca-colacompany.com/open-letter-to-the-fifa-executive-committee/>.

230. Members 2016 FIFA Reform Committee, http://resources.fifa.com/mm/document/affederation/committees/02/67/03/61/ultimatemembersfifa2016reformcommittee_neutral.pdf (last visited Dec. 21, 2016).

231. *Id.*

232. 2016 FIFA REFORM COMM., *supra* note 227.

233. While calling for transparency at FIFA and conceding that he was to be paid for his work as Chair, Carrard declined to disclose the amount of his own compensation. Evans, *supra* note 223.

representative and suggested that the Executive Committee, which was to be renamed the Executive Council, be expanded from twenty-five to thirty-seven members to add these six women as well as some other recommended changes.²³⁴

The Extraordinary Congress called to elect a new FIFA President took place on February 26, 2016.²³⁵ Blatter did not preside at this Congress, however, because on October 8, 2015,²³⁶ he had been suspended as President by the Ethics Committee pending a criminal investigation of a \$2 million payment made by Blatter to Michel Platini, former Secretary General of FIFA.²³⁷ FIFA's Acting President at the time of the Extraordinary Congress was Issa Hayatou, the longest serving FIFA Vice President.²³⁸ Having seen the Carrard presentation on December 2, 2015 and having endured another raid by Swiss authorities on behalf of the Department of Justice on December 3, 2015, this time the FIFA Executive Committee endorsed all of the Carrard's recommendations.

The full FIFA Congress met in February 2016 and adopted the Executive Committee recommendations thus insuring the adoption of some of the recommendations the IGC and others had unsuccessfully put forward earlier. For example, "integrity checks" of Executive Committee/Executive Council officials, which had been opposed in UEFA's January 2013 declaration, were added to the FIFA Statutes.²³⁹ Term limits for FIFA Council members, also opposed in the UEFA Declaration, are now included, although these are solely prospective and will not count the many years some members of the Executive Council have already enjoyed in FIFA's culture of corruption.²⁴⁰ The individual compensation, or at least some portion of it, of the President

234. 2016 FIFA REFORM COMM., *supra* note 227.

235. Krishnadev Calamur, *FIFA, Ho-Hum?*, ATLANTIC (Feb. 26, 2016), <https://www.theatlantic.com/international/archive/2016/02/fifa-elects-president/470964/>.

236. *Independent Ethics Committee Bans Several Football Officials*, FIFA.COM (Oct. 8, 2015), <http://www.fifa.com/governance/news/y=2015/m=10/news=independent-ethics-committee-bans-several-football-officials-2709916.html>.

237. Blatter and Platini had been suspended by the FIFA Ethics Committee once the Swiss Attorney General commenced its investigation. Rob Bagchi, *Sepp Blatter and Michel Platini Banned for Eight Years by Fifa*, TELEGRAPH (Dec. 21, 2015, 3:42 PM), <http://www.telegraph.co.uk/sport/football/fifa/12061288/Sepp-Blatter-and-Michel-Platini-banned-for-eight-years-by-Fifa-live.html>; *Independent Ethics Committee Bans Several Football Officials*, *supra* note 236.

238. Hayatou served as Acting President pursuant to Article 33.7 of the FIFA Statutes. FIFA, *supra* note 8, art. 33.7.

239. *Id.* art. 40.40.

240. *Id.* art. 33.

and Council members is now required to be made public.²⁴¹

E. Perfect Impunity

In the eleven decades since its founding in 1904, FIFA has evolved into a tremendously broad enterprise. It now administers not only traditional men's football but also women's football, futsal²⁴² and beach volleyball²⁴³ and, according to a recent FIFA document describing its vision of the future, FIFA has plans to expand into eSports as well.²⁴⁴

FIFA's staff of more than 200 is headquartered in a \$200 million building which administers FIFA's global empire with more members than the United Nations.²⁴⁵ As FIFA developed into a billion-dollar multinational enterprise, its leadership and corporate governance mechanisms have not sufficiently changed. The institutional reforms required to properly monitor and control FIFA's billions were not implemented, and the required financial expertise was never added to FIFA's Executive Committee. Since there is no higher authority to which FIFA answers, FIFA's leaders have been able to take advantage of the many temptations which billions of dollars presents. As Justice Robert Jackson wrote in a comparable situation this "opportunity for abuse ... was not neglected."²⁴⁶

As the Department of Justice Indictment notes, it was the tremendous expansion and commercial success of FIFA and football that "enabled [FIFA] to generate unprecedented profits through the sale of media rights to soccer matches. The corruption of the enterprise arose and flourished in this context."²⁴⁷ For example, bribing to get votes for President²⁴⁸ by buying support of Member entities through "sweetheart deals" of unrestricted, unaudited football development grants²⁴⁹ has

241. *Id.* art. 51, ¶ 10.

242. An indoor version of football played with five players, including the goalkeeper.

243. *See* FIFA, FIFA 2.0: THE VISION FOR THE FUTURE (2016).

244. *Id.* at 43.

245. Charlotte Alfred, *If FIFA Was A Country, This Is What It Would Look Like*, HUFFPOST: THE WORLDPOST (July 3, 2014), http://www.huffingtonpost.com/2014/07/03/fifa-controversy_n_5537578.html.

246. *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 548 (1949).

247. Superseding Indictment, *supra* note 19, at 39-40.

248. Martyn Ziegler, *Former Fifa President Hopeful Alleges Vote-buying*, INDEPENDENT (Jan. 11, 2012), <http://www.independent.co.uk/sport/football/news-and-comment/former-fifa-president-hopeful-alleges-vote-buying-6288010.html>.

249. Current President Gianni Infantino's campaign promises included millions for national football associations and for the continental confederations. David Conn, *Gianni Infantino's Victory Offers Fifa a Glimmer of Hope Amid the Gloom*, GUARDIAN (Feb. 26, 2016, 3:00 PM), <https://www.theguardian.com/football/blog/2016/feb/26/gianni-infantino-fifa->

resulted in the modern FIFA, a corruption travesty, where the moral hazard of knowing “no one is watching” has led to unending scandals which go unpunished.²⁵⁰ Indeed the term “FIFA reform” is best understood as an oxymoron. Without accountability reforms are not sufficient to insure honest, effective management of this huge enterprise. Absent accountability, FIFA’s leaders will continue to operate FIFA for their own benefit, making friends and associates rich in return for undisclosed benefits and all without fear of any consequences.

IV. FIFA: UNTOUCHABLE BECAUSE IT IS NOT ACCOUNTABLE

Prospects are grim for a reformed FIFA, an institution that will faithfully live up to the lofty objectives set out in the FIFA Statutes. One of these objectives is a fine worthy one, that recites all the right words, but is currently completely absent from FIFA operations: “[T]o promote integrity, ethics and fair play with a view to preventing all methods or practices, such as corruption, doping or match manipulation, which might jeopardise the integrity of matches, competitions, players, officials and member associations or give rise to abuse of association football.”²⁵¹

A. Why Change a Culture When, after all, “Things are really good - just the way they are.”

As documented in books and an unending torrent of news items, and as duly reported in the IGC,²⁵² Carrard,²⁵³ and other reports,²⁵⁴ a culture of corruption has pervaded the entire football ecosystem for

president-sheik-salman-sepp-blatter.

250. Jack Warner, Joao Havelange, and Ricardo Teixeira are just three of the many who have escaped FIFA’s “punishment” by resigning.

251. FIFA, *supra* note 8, art. 2(g).

252. INDEP. GOVERNANCE COMM., *supra* note 185.

253. 2016 FIFA REFORM COMM., *supra* note 227.

254. In response to criticism of human rights conditions for workers working on World Cup projects in Qatar, FIFA asked Harvard’s John Ruggie, the former United Nations Special Representative for Business and Human Rights, to recommend changes at FIFA which would “embed respect for human rights across its global operations.” Professor Ruggie delivered his Report, “FIFA & Human Rights,” in April 2016, recommending that clear policies be “embedded” in all aspects of FIFA’s operations and that FIFA conduct a complete analysis of human rights risks and adopt enabling remedies as appropriate. A human rights provision was added to FIFA Statutes in 2016. JOHN G. RUGGIE, “FOR THE GAME. FOR THE WORLD.” FIFA AND HUMAN RIGHTS 4 (2016). While at the United Nations Ruggie had prepared the United Nation’s Guiding Principles on Business and Human Rights officially endorsed by the U.N. in June 2011. See U.N. HUMAN RIGHTS OFFICE HIGH COMM’R, GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS (2011).

decades. Further, describing FIFA over the twenty-four years from 1991 to 2015, the Department of Justice Indictment refers to FIFA's "World Cup of Fraud."²⁵⁵

1. What is a "culture of corruption?"

Should we realistically expect FIFA to reform its accepted "equilibrium" of corruption?²⁵⁶ After all, humanity has often noted, yet failed to eliminate corrupt behaviors over the ages.²⁵⁷ The Ten Commandments have forbidden adultery for five millennia or more, but not with notable success. Twenty-five centuries ago, the problem of corruption in government was explained in terms that remain apt today:

Just as it is impossible not to taste the honey (or the poison) that finds itself at the tip of the tongue, so it is impossible for a government servant not to eat up, at least, a bit of the king's revenue. Just as fish moving under water cannot possibly be found out either as drinking or not drinking water, so government servants employed in the government work cannot be found out (while) taking money for themselves.²⁵⁸

Effecting fundamental changes in FIFA's accepted equilibrium of non-transparency, dishonesty and self-enrichment will be, at the very

255. Rupert Neate, *Fifa Officials Pocketed \$150m from 'World Cup of Fraud' - US Prosecutors*, GUARDIAN (May 27, 2015, 2:05 PM), <https://www.theguardian.com/football/2015/may/27/fifa-officials-world-cup-fraud-us-prosecutors>.

256. Others describe governments where corruption is rife as operating in an "equilibrium" of corruption. See e.g., Amanda Taub, *How 'Islands of Honesty' Can Cursh a System of Corruption*, N.Y. TIMES (Dec. 9, 2016), <http://www.nytimes.com/2016/12/09/world/asia/south-korea-brazil-argentina-impeachment.html>.

257. For example, seventy years ago smoking was widely accepted throughout the United States and much of the rest of the world. Cigarettes were seen on the streets, in our offices and homes, in movies, on television and sneaked in school bathrooms. Smoking saturated print advertising. Smoking was part of American culture. Serious efforts to curtail smoking in the United States began in January 1964 with the U.S. Surgeon General's Report. Half a century later there has been progress. Over these fifty years smoking rates as a percentage of the adult population have been significantly reduced from 43% to 18%. Other aspects of earlier cultures which have slowly changed over similarly extended periods include the abolition of slavery and the granting of women's suffrage. SURGEON GENERAL'S REPORTS ON SMOKING AND TOBACCO USE, CDC, https://www.cdc.gov/tobacco/data_statistics/sgr/ (last visited Aug. 9, 2017); OFFICE OF SURGEON GEN., THE HEALTH CONSEQUENCES OF SMOKING—50 YEARS OF PROGRESS (2014), <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf>.

258. Pranab Bardhan, *Corruption and Development: A Review of Issues*, 35 J. ECON. LITERATURE 1320, 1320 (1997) (citing KAUTILIYA, ARTHASASTRA (R.P. Kangle trans. 1979)(4th Cent. B.C.)).

least, a daunting task. Is it even conceivable that those who have thrived in FIFA's culture of corruption for so many decades could make the necessary basic changes in FIFA's operations, even if they truly desired it? After all, platitudinous press releases and bombastic denials from FIFA's Corruption Crisis Playbook have served FIFA well for decades. As one former independent expert brought to FIFA as part of the IGC has said:

Does the leadership have any incentive to reform itself? Clearly not. It really is time to recognize that anyone with sufficient insider status to run for and win an election at FIFA has been there long enough to understand that things are really very good – just the way they are.²⁵⁹

2. Within Football's culture of corruption no meaningful reform should be expected²⁶⁰

Currently there is no authority to which FIFA is responsible. There is no analog of a public company's shareholders who, when sufficiently outraged or motivated, can seek justice from a legal system. Indeed, FIFA's leaders have thrived in Switzerland's sports criminal nirvana, where, whatever FIFA officials do, whatever they steal, no matter what bribes they receive, they are answerable to absolutely no one. When allegations of fraud, self-dealing, bribery or other forms of corruption do penetrate the long-standing FIFA cloak of non-transparency, guilty parties may simply resign from FIFA, thus avoiding the "punishment" FIFA may exact under its Ethics Code.²⁶¹ And there can be no confidence in the current Ethics Committee, which found *prima facie* evidence of bribery insufficient to question the selection process in 2010.

259. Alexandra Wrage, *FIFA: More of the Same?*, MARK NEWS (June 30, 2016), <http://www.themarknews.com/2016/06/30/fifa-more-of-the-same/>.

260. Though this article is focused on the main body of FIFA, it is important to note that there are many indications that FIFA's continental confederations and at least some of the national associations may be similarly thoroughly corrupt. For example, the Department of Justice indicted the three immediate past presidents of the Brazilian football association and three prior presidents of CONMEBOL. Additionally, Jack Warner, former President of CONCACAF and Vice President of FIFA; Jeffrey Webb, former President of CONCACAF, Costas Takkas, former President of Cayman Islands football; and Chuck Blazer are four of those named as defendants in the Indictment. *Nine FIFA Officials and Five Corporate Executives Indicted for Racketeering Conspiracy and Corruption*, *supra* note 22.

261. See FIFA, *supra* note 81; *supra* Section II.B.2.

3. Is FIFA a Super Sovereign?

FIFA deems itself to be a supra-national institution.²⁶² As noted, former President Havelange stated there were only three powers on earth: the United States, the Soviet Union and FIFA.²⁶³ FIFA boasts of having more members than the United Nations and Blatter reveled in being addressed as “Excellency.” More significant, FIFA has a practice of regularly imposing its will on sovereign nations. One recent example of this was FIFA requiring Brazil, as host of the 2014 World Cup, to overturn a ten-year old Brazilian law banning the sale of alcohol in its football stadiums. Two years before the 2014 Brazil World Cup the Secretary General of FIFA declared: “Alcoholic drinks are part of the Fifa World Cup, so we’re going to have them. Excuse me if I sound a bit arrogant but that’s something we won’t negotiate.”²⁶⁴ Budweiser was a prominent sponsor of FIFA during the 2014 World Cup.

Other examples of FIFA’s supranational role are found in Nigeria,²⁶⁵ Belize,²⁶⁶ South Africa²⁶⁷ and in the recent effort by FIFA to prohibit Scottish and English players from wearing poppies which commemorate the millions who died in World War I.²⁶⁸

Additionally, in November 2016 FIFA’s Secretary General, Fatma Samoura, announced a visit to Sierra Leone, where the government’s Anti-Corruption Commission is investigating match-fixing and the mismanagement of funds given to the Sierra Leone

262. Wrage, *supra* note 180.

263. See Ziegler, *supra* note 68; *supra* Section III.B.

264. Beer ‘Must Be Sold’ at Brazil World Cup, Says Fifa, BBC (Jan. 19, 2012), <http://www.bbc.com/news/world-latin-america-16624823>.

265. Brian Oliver, *Free-for-all and corruption in African football shames Fifa*, GUARDIAN (Oct. 24, 2010, 4:00 AM), <https://www.theguardian.com/football/2010/oct/24/corruption-african-football-fifa>.

266. *Suspension of the Football Federation of Belize*, FIFA.COM (June 17, 2011) <http://www.fifa.com/worldcup/news/y=2011/m=6/news=suspension-the-football-federation-belize-1454212.html>.

267. South Africa agreed to create “World Cup Courts” to speed justice in connection with violations of World Cup related offenses, such as petty larceny, or selling non-FIFA sponsor products within a World Cup “designated area. See, e.g., 2010 FIFA World Cup South Africa Special Measures Act of 2006 (S. Afr.); 2010 FIFA World Cup South Africa Special Measures Safety and Security Regulations, 2009, GN R. 680 of GG 32326 (12 June 2009).

268. The poppy armbands were worn on November 11, 2016, Remembrance Day in Britain, the date on which the World War I Armistice was signed. FIFA announced that it had imposed fines totaling more than \$100,000 on the national football associations of England, Northern Ireland, Scotland and Ireland for ignoring FIFA’s edict. *Fifa ‘Rejects England & Scotland Request to Wear Poppies on Armbands’*, BBC (Nov. 1, 2016), <http://www.bbc.com/sport/football/37832115>.

Football Association (“SLFA”).²⁶⁹ She asked the SLFA to arrange a meeting with Sierra Leone’s President, saying: “We are confident that Sierra Leone’s president and government officials will understand and honour our request for an official visit on November 16.”²⁷⁰ FIFA declared from afar that:

FIFA has no reason to suspect there has been misuse of funds that FIFA has provided to the SLFA...In addition, over the course of the last three years, FIFA has noticed several activities of third parties that could be considered as interference (in) the running of the SLFA.... Fifa urges the relevant Sierra Leone authorities - in particular the Ministry of Sports and the Anti-Corruption Commission - to allow the SLFA to conduct its affairs and activities without unnecessary obstruction as no Fifa regulations have been contravened with regards to the Fifa funding.²⁷¹

It is clear after more than a century of scandals and a broad array of good-looking reforms carefully packaged in nice-sounding press releases that FIFA regularly imposes its will on sovereign nations, and absent accountability, should be expected to continue this practice.

B. The First 100+ Days of Infantino

The former Secretary General and Acting President of UEFA, Gianni Infantino, was elected President of FIFA at the February 26, 2016 Extraordinary Meeting of the FIFA Congress necessitated by Blatter’s announcement²⁷² that he would resign upon election of a successor at an Extraordinary Congress of FIFA.²⁷³ Of the initial slate of seven candidates who sought to succeed Blatter, Infantino was elected in the second round of voting when Prince Ali Bin Al Hussein of Jordan threw his support to Infantino, defeating Sheikh Salman Bin Ebrahim Al Khalifa of Bahrain and insuring Infantino’s election.²⁷⁴

269. *Fifa’s Fatma Samoura to Visit Sierra Leone over FA Dispute*, BBC (Nov. 8, 2016), <http://www.bbc.com/sport/football/37900368>.

270. *Id.*

271. *Fifa Backs Sierra Leone FA in Use of Funds*, BBC (Sept. 21, 2016), <http://www.bbc.com/sport/football/37432190>.

272. *FIFA President to Lay Down His Mandate at Extraordinary Elective Congress*, FIFA.COM (June 2, 2015), <http://www.fifa.com/governance/news/y=2015/m=6/news=fifa-president-to-lay-down-his-mandate-at-extraordinary-elective-congr-2617742.html>.

273. As noted, Issa Hayatou was serving as Interim President of FIFA at this time. See Evans, *supra* note 223.

274. Ben Rumsby, *Gianni Infantino’s First Crisis as Fifa President Intensifies as Prince Ali Accuses Him of ‘Complete Betrayal,’* TELEGRAPH (May 15, 2016, 2:24 PM),

Was Infantino's election good news for football?

As a basic tenet of his campaign for the FIFA presidency, Infantino essentially bribed voting members.²⁷⁵ Specifically, "Mr. Infantino was the candidate for the presidency that stood at the podium, on live television, and promised each of the 209 football associations \$5 million. Even in his heyday, Blatter restrained himself to million dollar handouts. Infantino's billion dollar promise out-Blattered Blatter...."²⁷⁶

While a new FIFA president was essential to reforming FIFA, electing Infantino from within the corrupt football ecosystem²⁷⁷ was not the fresh start FIFA needed.²⁷⁸

1. Infantino's New Secretary General

Infantino pleasantly surprised much of the football world at his first regular FIFA Congress held in Mexico City. On May 13, 2016 he secured the election²⁷⁹ of Fatma Samoura, an experienced United Nations official from Senegal as the first woman Secretary General of FIFA.²⁸⁰ A truly independent Secretary General from outside the FIFA world is welcome news and augured well for the future of corporate governance at FIFA since the Secretary General is the Chief Executive Officer of FIFA.²⁸¹ Furthermore, appointing a woman and one from outside FIFA's contaminated culture of corruption momentarily enhanced FIFA's abysmal record as an all-male institution, and was a sign that things could change at FIFA.

<http://www.telegraph.co.uk/football/2016/05/16/gianni-infantinos-first-crisis-as-fifa-president-intensifies-as/>.

275. Wrage, *supra* note 180.

276. *Id.*

277. Infantino had been working at UEFA for more than fifteen years when elected to the FIFA presidency. He has been described as a "career sports administrator." Conn, *supra* note 256.

278. Notably, Infantino was implicated in the "Panama Papers" for signing an agreement selling rights to certain tournaments in Latin America. Infantino was head of Legal Services at UEFA at the time. *The Panama Papers*, ICIJ, <https://panamapapers.icij.org/> (last visited Dec. 29, 2016); *FIFA head Gianni Infantino Implicated in Panama Papers*, DW (June 4, 2016), <http://www.dw.com/en/fifa-head-gianni-infantino-implicated-in-panama-papers/a-19165971>.

279. FIFA, *supra* note 8, art. 34.9 ("The Council shall appoint the Secretary General on the proposal of the President. The Secretary General may be dismissed by the Council acting alone.").

280. *Fatma Samba Diouf Samoura Appointed FIFA Secretary General*, FIFA.COM (May 13, 2016), <http://www.fifa.com/about-fifa/news/y=2016/m=5/news=fatma-samba-diouf-samoura-appointed-fifa-secretary-general-2790885.html>.

281. FIFA, *supra* note 8, art. 37.1.

2. FIFA's Version of "Independence"

The potential progress exemplified by Samoura's election was offset when Infantino, on the same day, arranged for the Congress to give the FIFA Executive Council, the newly expanded version of the earlier FIFA Executive Committee, the power to remove the "independent" members on the FIFA Ethics and Audit and Compliance, Appeal and Governance Committees who had only recently been installed in 2012.²⁸² The head of the FIFA Audit and Compliance Committee, Domenico Scala, the leading independent member of FIFA's administration, angrily resigned,²⁸³ asserting that this "stealthy" change meant that the so-called "independent" FIFA committees "are factually deprived of their independence and are in danger of becoming auxiliary agents of those whom they should actually supervise."²⁸⁴

3. Ethics Committee Investigates Infantino Regarding Leaked Memo

Immediately following the FIFA Congress in Mexico City, an unknown FIFA employee forwarded an eleven page memo to the then acting head of the FIFA Audit and Compliance Committee.²⁸⁵ This memo, dated May 23, 2016, which was subsequently leaked to the press,²⁸⁶ charged Infantino with a number of acts as newly elected President which the unknown employee believed should be considered by the Audit Committee and passed on to the Ethics Committee.²⁸⁷ The memo described potential breaches of several articles in the FIFA

282. Owen Gibson, *Fifa's Independent Audit Committee Chairman Resigns in Protest at Reforms*, GUARDIAN (May 14, 2016), <https://www.theguardian.com/football/2016/may/14/domenico-scala-fifa-auditor-resigns-protest>.

283. *Id.*

284. *Id.* An email leaked to German and Swiss media in June 2016 indicated that Infantino had ordered the destruction of a recording of the Executive Council meeting he had conducted prior to the May 13, 2016 Mexico City FIFA Congress. News reports suggest the recordings revealed that Infantino had "pushed for the removal of FIFA's Audit and Compliance Chief Domenico Scala. Andrew Warshaw, *Infantino Orders Council Tapes Destroyed as FIFA's New Culture of Cover-up Deepens*, INSIDE WORLD FOOTBALL (June 3, 2016), <http://www.insideworldfootball.com/2016/06/03/infantino-orders-council-tapes-destroyed-fifas-new-culture-cover-deepens>.

285. Andy Brown, *Leaked Memo Accuses Infantino of Ethics Committee Violations*, SPORTS INTEGRITY INITIATIVE (July 5, 2016), <http://www.sportsintegrityinitiative.com/leaked-memo-accuses-fifas-infantino-of-ethics-committee-violations/>.

286. *Id.*

287. MEMORANDUM FROM REDACTED TO SINDISIWE MABASO-KOYANA, ACTING CHAIRPERSON OF THE AUDIT AND COMPLIANCE COMMITTEE (May 23, 2016).

Ethics Code.

The matter was referred to the FIFA Ethics Committee which conducted an informal investigation into certain expenses and claims for expense reimbursement as well as Infantino's improper use of private jets for travel to Moscow, Doha, and Slovenia.²⁸⁸ The memo asserted that taking private aircraft paid for by third parties created a conflict of interest in violation of Articles 19 and 20 of the FIFA Code of Ethics.²⁸⁹ The preliminary investigation led to formal Ethics Committee proceedings and on August 5, 2016, a press release directly from the Investigatory Chamber of the Ethics Committee stated: "It was found that no violation of the FIFA Code of Ethics (FCE) had been committed by Mr Infantino. The adjudicatory chamber took note of and accepted the decision of the investigatory chamber."²⁹⁰

The May 23, 2016 memo later generated news reports of yet another possibly related issue. A July 5, 2016 news item describes a "purge" of alleged whistleblowers.²⁹¹ Two FIFA staff members logically involved in preparing the leaked memo, Severin Podolak, head of FIFA's travel section and a long-time employee at FIFA, and Christoph Schmidt, chief of the Secretary General's office, were summarily terminated according to this unconfirmed item.²⁹²

4. Blatter – Kattner – Valcke Bonuses

Quinn Emanuel²⁹³ is the U.S.-based international law firm hired by FIFA in May 2015 immediately upon the release of the first Department of Justice Indictment. Even though not indicted, FIFA apparently hired the firm because it wanted to protect itself.²⁹⁴ As part

288. *Id.*

289. *Id.*

290. *Independent Ethics Committee Concludes Proceedings Regarding Gianni Infantino*, FIFA.COM (Aug. 5, 2016), <http://www.fifa.com/governance/news/y=2016/m=8/news=independent-ethics-committee-concludes-proceedings-regarding-gianni-in-2819869.html>.

291. Andrew Warshaw, *More Blood on the Walls at FIFA as Top Bosses Purge Ethics Collaborators*, INSIDE WORLD FOOTBALL (July 5, 2016), <http://www.insideworldfootball.com/2016/07/05/blood-walls-fifa-top-bosses-purge-ethics-collaborators/>.

292. *Id.*

293. The formal name of the firm is Quinn Emanuel Urquhart & Sullivan LLP. QUINN EMANUEL TRIAL LAWYERS, <http://www.quinnemanuel.com/> (last visited Dec. 29, 2016).

294. Malcom Moore & Ralph Atkins, *Fifa: The fall of the house of Blatter*, FIN. TIMES (Nov. 22, 2015), <https://www.ft.com/content/64573fc6-8df6-11e5-a549-b89a1dfede9b>; David Ingram, Nate Raymond & Katharina Bart, *FIFA hires ex-U.S. prosecutor as its lawyer in bribery probe*, REUTERS (June 5, 2015, 6:09 PM), <http://www.reuters.com/article/us-soccer-fifa-lawyer-idUSKBN0OL1YQ20150605>.

of this effort, Quinn Emanuel began an investigation into past FIFA operations.²⁹⁵ On May 23, 2016, FIFA announced that Markus Kattner, FIFA Chief Financial Officer,²⁹⁶ had been fired. On June 3, 2016 Quinn Emanuel made public information regarding Kattner's dismissal which also implicated Blatter and Jerome Valcke, the prior Secretary General banned by FIFA at the end of 2015.²⁹⁷ The Quinn Emanuel investigation determined that between 2010 and 2015 Blatter, Valcke and Chief Financial Officer Kattner had entered into a series of contracts with FIFA, approved and executed among themselves, providing remarkably generous compensation bonuses in addition to their very generous and still secret salaries; the bonuses totaled more than \$80,000,000.²⁹⁸ Quinn Emanuel has suggested that these arrangements were clear breaches of the fiduciary duties of these officers to FIFA as well as likely being in violation of Swiss law.²⁹⁹

5. KPMG Resigns

In a highly unusual development in the staid world of Big Four public auditing companies, on June 13, 2016, just ten days after the

295. Rebecca R. Ruiz, *In FIFA Inquiry, Switzerland Aids U.S. but Is Wary of Being Eclipsed*, N.Y. TIMES (Dec. 5, 2015), <http://www.nytimes.com/2015/12/06/sports/soccer/in-fifa-inquiry-switzerland-aids-us-but-is-wary-of-being-eclipsed.html>.

296. At the time Kattner was also Acting Secretary General replacing Jerome Valcke, long serving Secretary General who had been suspended on September 17, 2015 in connection with an investigation into a major scandal involving ticket sales for the 2014 World Cup held in Brazil. Following a review by the FIFA Ethics Committee Valcke had been terminated on January 9, 2016. Nick Harris & Charles Sale, *FIFA Secretary General Jerome Valcke Relieved of his Duties After Being Accused of Seeking to Earn Huge Profits by Providing World Cup Tickets for Sale on Black Market*, DAILY MAIL (Sept. 18, 2015 4:50 PM), <http://www.dailymail.co.uk/sport/sportsnews/article-3238665/FIFA-hit-fresh-scandal-Sepp-Blatter-s-right-hand-man-Jerome-Valcke-accused-seeking-earn-huge-profits-providing-World-Cup-tickets-sale-black-market.html>.

297. *Attorneys for FIFA Provide Update on Internal Investigation and Details on Compensation for Former Top Officials*, FIFA.COM (June 3, 2016), <http://www.fifa.com/governance/news/y=2016/m=6/news=attorneys-for-fifa-provide-update-on-internal-investigation-and-detail-2799851.html>.

298. Salary continuation schemes and complete indemnification for legal expenses and fines etc., even if dismissed for cause were also included. Zachary Zaggar, *Top FIFA Leaders Paid Themselves \$80M, Quinn Emanuel Says*, LAW 360 (June 3, 2016, 4:39 PM), <http://www.law360.com/articles/803395/top-fifa-leaders-paid-themselves-80m-quinn-emanuel-says>.

299. The firm commented that it was "noteworthy" that the final extension of Kattner's employment contracts provided for a four-year extension of his guaranteed salary to 2023, thus giving him a total of more than eight years of guaranteed salary and bonus, was approved by the Compensation subcommittee of the Audit and Compliance Committee on May 30, 2015. This was just three days after Swiss authorities had raided the Baur au Lac hotel and arrested seven FIFA officials for alleged fraud and corruption. *Attorneys for FIFA Provide Update on Internal Investigation and Details on Compensation for Former Top Officials*, *supra* note 297.

details of the Kattner-Valcke-Blatter bonus arrangement were released, KPMG resigned as FIFA's outside auditor.³⁰⁰ The *Wall Street Journal* reported that it had seen documents and heard from sources that KPMG, which had enjoyed sixteen years as FIFA's outside auditor, had questioned Infantino's promise to expand development funds to \$5 million, since such sums "bear an increased risk of funds being misused."³⁰¹ Further, the *Financial Times* reported that KPMG raised issues with Infantino in May and ultimately concluded that it "did not have trust that the new management would do what they said they were going to do to improve governance."³⁰²

Three months later, in September 2016, FIFA reported that PricewaterhouseCoopers ("PwC"), another Big Four public accounting firm, had agreed to become FIFA's auditor.³⁰³ Consistent with the long-standing practice of FIFA spinmeisters trumpeting its good-looking reforms, FIFA announced the hiring of PwC as a replacement for KPMG and as a step it was taking to improve its transparency. Specifically, FIFA stated: "In light of the serious allegations involving financial transactions outlined by the Swiss and US authorities, it is essential that the financial function at FIFA be externally reviewed and thoroughly reformed."³⁰⁴ Additionally,

FIFA President Gianni Infantino welcomed the decision of the ... FIFA Council as a further important step in the reform process underway at FIFA and an

300. *FIFA Statement on KPMG Resignation*, FIFA.COM (June 13, 2016), <http://www.fifa.com/about-fifa/news/y=2016/m=6/news=fifa-statement-on-kpmg-resignation-2801452.html>

301. John Letzig & Joshua Robinson, *Auditor Raised Issues With FIFA Before Resigning*, WALL ST. J. (June 19, 2016, 7:58 PM), <http://www.wsj.com/articles/auditor-raised-issues-with-fifa-before-resigning-1466380050>.

302. KPMG also expressed concerns over proposals to increase funds to national and regional football associations. During his presidential campaign, Mr Infantino pledged to invest £1.2bn — or a quarter of Fifa's revenues — into football development around the world. KPMG wrote: "Significantly higher funds available to all confederations and member associations bear an increased risk of funds being misused as some of these entities may not yet have the organisational structure, governance and/or possibilities to spend significantly more money in an appropriate way to promote and develop football in their country." Murad Ahmed, Harriet Agnew, & Ralph Atkins, *KPMG Quits Fifa over Reform Programme Doubts*, FIN. TIMES (June 20, 2016), <https://www.ft.com/content/0de97f98-360f-11e6-9a05-82a9b15a8ee7>.

303. Michael Cohn, *FIFA Picks PwC as New Audit Firm*, ACCT. TODAY (Sept. 19, 2016, 1:29 PM), <http://www.accountingtoday.com/news/audit-accounting/fifa-picks-pwc-as-new-audit-firm-79290-1.html>.

304. Jessica Fino, *FIFA Appoints PwC Switzerland as Auditor*, ECONOMIA (Sept. 19, 2016), <http://economia.icaew.com/news/september-2016/fifa-appoints-pwc-switzerland-as-auditor>.

example of how the organisation is restoring its financial control and management mechanisms to the fullest. “We are delighted to have appointed PwC, and we look forward to working with them as FIFA moves forward with its programme of reforms.”³⁰⁵

*C. Accountability: Can It Be Imposed?*³⁰⁶

The Department of Justice Indictment has triggered criminal investigations in several countries, including Switzerland,³⁰⁷ Germany³⁰⁸ and England,³⁰⁹ as well as in the home countries of some of those indicted. While neither Blatter nor the former Secretary General of FIFA, Jerome Valcke, was named in the Indictment, Blatter has hired Richard Cullen, Chairman of McGuireWoods, as well as Lorenz Erni, a Zurich lawyer³¹⁰ and Valcke has hired a prominent New

305. *FIFA Appoints PwC as New Auditors*, FIFA.COM (Sept. 16, 2016), <http://www.fifa.com/about-fifa/news/y=2016/m=9/news=fifa-appoints-pwc-as-new-auditors-2834104.html>. An accounting industry publication adopted FIFA’s characterization of the replacement of KPMG by PwC similarly: “According to [FIFA], the new position was part of its package of reforms, which aim to commit to the principles of good governance, integrity and transparency. *Fino*, *supra* note 304.”

306. For a discussion of how FIFA’s commercial sponsors may effectuate change see Pammela S. Quinn’s article, *Sponsoring Corruption*. “Using case studies of corruption and corporate sponsor responses to scandals in the IOC and FIFA, [Quinn] considers broadly how and when corporate sponsors can effectively serve as private regulators of corruption in international sports.” Specifically, Quinn states: “FIFA’s sponsors include some of the largest multi-national enterprises in the world, including Coca-Cola, Budweiser, Adidas, and Hyundai/Kia. While traditionally viewed as subjects of regulation, large multi-national corporations also possess enormous potential to wield regulatory authority over FIFA and other international sporting bodies and events that they sponsor.” Pammela S. Quinn, *Sponsoring Corruption*, 32 MD. J. INT’L L. ____ (2017).

307. In addition to the criminal investigations of Blatter and Valcke, the Swiss are looking into others including a former Secretary General of FIFA at the time of the alleged bribes paid in connection with the 2006 World Cup hosted by Germany. *Former FIFA Executive Linsi Added to Corruption Probe*, SWISSINFO (Nov. 30, 2016, 12:35 PM), http://www.swissinfo.ch/eng/house-raid_former-fifa-executive-linsi-added-to-corruption-probe/42718020. In connection with the same alleged bribe the Swiss are also investigating German football legend Franz Beckenbauer as well as Wolfgang Niersbach, Theo Zwanziger and Horst Rudolf Schmidt. *Franz Beckenbauer Investigated for Corruption over 2006 World Cup*, BBC (Sept. 1, 2016), <http://www.bbc.com/news/world-europe-37246543>.

308. Germany has begun an investigation into tax violations in connection with the alleged bribes related to the 2006 World Cup. *German Football Chief Resigns over Corruption Allegations*, BBC (Nov. 9, 2015), <http://www.bbc.com/sport/football/34770939>.

309. Suzi Ring, *FIFA Faces Possible Money Laundering Probe From U.K. Prosecutors*, BLOOMBERG (Oct. 27, 2015, 9:00 AM), <https://www.bloomberg.com/news/articles/2015-10-27/fifa-faces-possible-money-laundering-probe-from-u-k-prosecutors>.

310. David Ingram & Nate Raymond, *Exclusive: FIFA’s Blatter, Valcke Hire U.S. Lawyers for Corruption Probe*, REUTERS (June 17, 2015, 7:35 PM), <http://www.reuters.com/article/us-soccer-fifa-blatter-idUSKBN0OX2QW20150617>.

York White Collar Crime lawyer, Barry Berke.³¹¹

The Indictment has also attracted the attention of others in football, including South Africa's Danny Jordaan³¹² and Brazil's Ricardo Teixeira,³¹³ who are said to have restricted their international travel to avoid arrest. While the Indictment has served as an effective disrupter for some within FIFA and football, the Department of Justice proceedings cannot directly impose accountability upon FIFA. As demonstrated herein, the necessary fundamental reforms FIFA and football require will not be imposed from within.

Is there a realistic means, a practical route for successfully making football, starting with FIFA, responsible to its fans and other constituencies? Is there any hope at all that FIFA can be made accountable?

1. Those Who Have Resigned Give Us Some Hope

As we have seen there have been truly independent persons and entities associated with FIFA. Five of them have recently found it necessary to make principled withdrawals from FIFA. For example, Transparency International refused to join the IGC once it understood that Mark Pieth, its Chair, was to be paid \$128,000 plus the daily \$5000 fee paid to other IGC members.³¹⁴

Alexandra Wrage of Trace International resigned from the IGC, after participating on an unpaid basis, when she concluded that no genuine FIFA reform was possible through the IGC process;³¹⁵ Michael Garcia resigned as head of the Investigative Chamber of the Ethics Committee after the Adjudicative Chamber distorted and misinterpreted the conclusions of his report on the bidding to host the 2018 and 2022 World Cup Championships;³¹⁶ FIFA's truly independent Chief Financial Officer, Domenico Scala, resigned after Infantino arranged to give the FIFA Executive Council the power to fire the independent officers supposedly overseeing their activities.³¹⁷ Finally, after sixteen years FIFA's independent public accounting firm,

311. *Id.*

312. *Jordaan Knew About \$10m, but Denies Bribery*, ENCA (June 1, 2015, 5:51 AM), <https://www.enca.com/south-africa/jordaan-knew-about-10m-denies-bribery>.

313. Ziegler, *supra* note 68.

314. *Fans say no to FIFA reform committee*, FOOTBALL SUPPORTERS FED'N (Jan. 6, 2012), <http://www.fsf.org.uk/latest-news/view/fans-say-no-to-fifa-reform-committee>.

315. Alexandra Wrage did participate in the IGC as a truly independent member, but refused all compensation. Wrage, *supra* note 180.

316. *See supra* Section IV.C.

317. Gibson, *supra* note 282.

KPMG, withdrew from auditing FIFA after it concluded it could not trust FIFA management to implement reforms at FIFA.³¹⁸

It should not be surprising that not one of these resignations, any one of which should have been deeply embarrassing to the leadership of FIFA, has had any discernible impact on operations at FIFA. Some evidence of one subtle change at FIFA may be inferred from the November 2016 announcement by Infantino that he had suspended development payments to twenty-three national football associations that did not have audited financials and other appropriate controls.³¹⁹ This confirms the concern KPMG is reported to have expressed to Infantino³²⁰ that the larger development payments promised by Infantino as part of his election campaign for FIFA President, could not be tracked and that there would be no way to audit the actual use of these funds.³²¹

2. The Best Hope is Action by Switzerland

a. Earlier Swiss “Actions”

The most direct and effective means of imposing accountability on FIFA and thus on football generally is action by the Swiss government. FIFA is organized under the Swiss Civil Code as a not-for-profit organization³²² and there are currently few Swiss laws that can be applied to such an organization. More to the point, there has been little interest in Switzerland in effectively pursuing FIFA. Some earlier Swiss investigations into major bribes at FIFA have resulted in a formal termination of investigation and a decision not to prosecute because, until April 2016, Swiss law did not prohibit FIFA bribes.³²³

A criminal investigation of Blatter commenced only on September 24, 2015, three months after the May 2015 Department of Justice Indictment.³²⁴ The Swiss Office of the Attorney General

318. *FIFA Statement on KPMG Resignation*, *supra* note 300.

319. *Id.*

320. Letzig & Robinson, *supra* note 301.

321. Brian Homewood, *FIFA President Threatens Funding to Nontransparent Members*, *GLOBE & MAIL* (2016), <http://www.theglobeandmail.com/sports/soccer/fifa-president-threatens-funding-to-members-who-miss-transparency-standards/article32674183/>.

322. FIFA, *supra* note 8, art 1.1.

323. Michael Shields, *Swiss Crack Down on Bribery as ‘Lex FIFA’ Set to Take Force*, *REUTERS* (Apr. 20, 2016, 8:53 AM), <http://www.reuters.com/article/us-swiss-corruption-idUSKCN0XH1GE>.

324. *Criminal proceedings against the President of FIFA*, FED. COUNCIL (Sept. 25, 2015), <https://www.admin.ch/gov/en/start/dokumentation/medienmitteilungen.msg-id-58891.html>.

announced³²⁵ that it was investigating Blatter for “criminal mismanagement”³²⁶ and “misappropriation.”³²⁷ These possible charges relate to a contract executed by Blatter ten years earlier, in 2005, with Jack Warner³²⁸ of the Caribbean Football Union. It has been reported that the contract transferred certain rights to the 2010 World Cup and 2014 World Cup for a total of \$600,000.³²⁹ Warner allegedly resold these rights for \$20,000,000.³³⁰ The Swiss Attorney General suspects that this contract may have been “unfavorable” to FIFA.³³¹

In addition to this ten-year old matter, the Swiss have announced that they are investigating Blatter for making a possibly “disloyal” payment related to the \$2,000,000 payment Blatter acknowledges that he made to Platini in February, 2011.³³² Blatter and Platini have defended this transaction, for which there is a complete lack of documentation, as having been made for work done by Platini when he worked at FIFA between 1999 and 2002.³³³ That would make the fact that Platini withdrew from contesting the FIFA Presidency in 2011 an unrelated coincidence. This investigation also began only after the Department of Justice Indictment and, is not a prosecution. Having been embarrassed into announcing the investigation, it remains to be seen whether the Swiss will bother to prosecute during Blatter’s lifetime.

Additional evidence of Switzerland’s lack of enthusiasm for

325. *Id.*

326. SCHWEIZERISCHES STRAFGESETZBUCH [StGB] [CRIMINAL CODE] Oct. 1, 2016, art. 158 (Switz.).

327. *Id.* StGB art. 138.

328. Warner is one of the CONCACAF officials indicted by the Department of Justice in its Indictment. Warner was CONCACAF President for twenty-one years (1990-2011) and a member of the FIFA Executive Committee for twenty-eight years (1983-2011). He has been accused of corrupt activities more than once. He resigned from all football related positions in 2011. In 2013 CONCACAF found him guilty of fraud against COBNCACAF and FIFA. FIFA itself took no action following Warner’s resignation until September 2015.

329. Sam Borden, *Sepp Blatter, FIFA President, Faces Criminal Investigation in Switzerland*, N.Y. TIMES (Sept. 25, 2015), https://www.nytimes.com/2015/09/26/sports/soccer/sepp-blatter-fifa-switzerland-criminal-proceedings.html?_r=0.

330. *The Rise and Fall of Sepp Blatter*, N.Y. TIMES (Dec. 21, 2015), <http://www.nytimes.com/interactive/2015/05/27/sports/soccer/sepp-blatter-fifa-timeline.html>.

331. Borden, *supra* note 329.

332. *Sepp Blatter, Michael Platini banned by FIFA court for eight years: ‘I will fight until the end’*, NAT’L POST (Dec. 21, 2015, 12:15 PM), <http://nationalpost.com/sports/soccer/sepp-blatter-michel-platini-banned-by-fifa-court-for-eight-years-i-will-fight-until-the-end/wcm/88bc86fe-cbe3-46b6-9ff4-103cb0f9e2eb>.

333. *Id.*

imposing accountability on FIFA relates to the FIFA decision in 2000 to have Germany host the 2006 World Cup. Following the 2015 Department of Justice Indictment, the Swiss were inspired to “commence” investigating a payment made by German football legend Franz Beckenbauer.³³⁴ In a statement made by Beckenbauer in 2015 he confirmed that the payment in question was made in 2000, but that it was not for votes.³³⁵ German authorities have also recently commenced investigations into this payment.³³⁶

The reluctance of the Swiss to interfere with the operations of the world’s most popular sport can be seen in the Swiss dismissal of criminal proceedings against former FIFA President Havelange and his former son-in-law, Ricardo Teixeira. The Swiss concluded that massive bribes Havelange and Teixeira had received in a scandal involving International Sports and Leisure, a Swiss marketing firm, were not punishable under Swiss criminal law.³³⁷ As we saw, both Havelange and Teixeira resigned from FIFA to avoid FIFA’s “sanctions.”³³⁸

b. Switzerland: Nirvana for Sports Criminals

FIFA and other sports governing bodies are situated in Switzerland for many reasons. Neutrality, a convenient central European location, and an educated work force are certainly part of the explanation. The unique features of Swiss law, however, likely mean a great deal more. The “organized irresponsibility”³³⁹ of Swiss not-for-profit entities, has permitted FIFA to grow into today’s self-dealing “cesspit of corruption”³⁴⁰ where football’s officials are free to act, not “For the Game” or “For the World,” but “Just for Us.” According to

334. Beckenbauer was chair of the German World Cup organizing Committee. He was captain of the German team which won the world cup in 1974 and coached the German team that won the world cup in 1990. *Franz Beckenbauer Investigated for Corruption over 2006 World Cup*, BBC (Sept. 1, 2016), http://www.bbc.com/news/world-europe-37246543?ocid=global_bbcom_email_01092016_top+sport+stories.

335. *Id.* The German football league acting belatedly in this matter suspended the president of Germany’s football association at the time of tis payment for one year.

336. *President of German Football Association Wolfgang Niersbach Resigns*, DW (Sept. 11, 2015), <http://www.dw.com/en/president-of-german-football-association-wolfgang-niersbach-resigns/a-18837386>.

337. ECKERT, *supra* note 82; Shields, *supra* note 323. See David Bond, *The £66m ‘Bribe’ Shadow Hanging over Fifa*, TELEGRAPH (Mar. 13, 2008, 12:01 AM), <http://www.telegraph.co.uk/sport/columnists/davidbond/2294323/The-66m-bribe-shadow-hanging-over-Fifa.html>.

338. See *supra* Section V.A.3

339. Duval, *supra* note 77.

340. *The Economist Explains How America Is Pursuing FIFA*, ECONOMIST (Jun. 1, 2015), <http://www.economist.com/blogs/economist-explains/2015/06/economist-explains>.

TI's "Global Corruption Report: Sport,"³⁴¹ Swiss criminal bribery law cannot be applied to FIFA officials because they are not "public officials."³⁴²

c. Swiss Implicit Complicity

To understand how difficult it may be to motivate the Swiss government to impose true accountability upon FIFA under Swiss law, we must note that Switzerland serves as the preeminent domicile of international sports associations. Currently there are at least sixty-five international sports governing organizations headquartered in Switzerland, although few have the billions FIFA finds so tempting because no one is looking.³⁴³ These associations range from those that oversee archery, boxing and canoeing to those involved with table tennis, taekwondo and volleyball.³⁴⁴ In the aggregate this sports organization industry contributes over \$1 billion annually to the Swiss economy³⁴⁵ and generates more than 30,000 overnight hotel stays.³⁴⁶ It is no surprise; therefore, that Switzerland remains solicitous to this corner of its economy.

There is another basis for Switzerland's reluctance to prosecute FIFA officials. Dubai is a competitor for hosting international sports organizations. Dubai is globally more centrally located than Switzerland and has the world's busiest international airport³⁴⁷ making international connections convenient. Perhaps even more threatening to Switzerland, Dubai imposes no personal income tax on non-residents living there.³⁴⁸ The challenge presented by Dubai is evident in the move of the International Cricket Council to Dubai.³⁴⁹ The economic significance to Switzerland of FIFA and other international

341. GLOBAL CORRUPTION REPORT: SPORT (Gareth Sweeney ed., 2016).

342. This is precisely the reason the Department of Justice Indictment, which tracked more than \$100 million in bribes, included no charges under the U.S. FCPA. Lucien W. Valloni & Eric P. Neuenschwander, *The Role of Switzerland as Host*, GLOBAL CORRUPTION REPORT: SPORT 322 (Gareth Sweeney ed., 2016).

343. Simon Bradley, *Swiss Set to Get Tough over Sports Corruption*, SWISSINFO (Oct. 2, 2014, 11:00 AM), http://www.swissinfo.ch/eng/new-rules_swiss-set-to-get-tough-over-sports-corruption/40801520.

344. AMANDINE BOUSIGUE & CLAUDE STRICKER, *THE ECONOMIC IMPACT OF INTERNATIONAL SPORTS IN SWITZERLAND* (2015).

345. *Id.* at 31.

346. *Id.* at 39.

347. Katia Hetter & Karla Cripps, *The World's Busiest Airport Is ...*, CNN (Sept. 9, 2016, 7:08 AM), <http://www.cnn.com/2016/09/09/aviation/worlds-busiest-airports-final-2015/>.

348. *Dubai Taxation*, LIVING IN DUBAI, <http://www.livingindubai.org/dubai-taxation/> (last visited Jan. 3, 2017).

349. *Cricket Chiefs Move Base to Dubai*, BBC (Mar. 7, 2005, 4:42 PM), <http://news.bbc.co.uk/sport2/hi/cricket/4326601.stm>.

sports governing associations has led some to refer to the “implicit complicity³⁵⁰ of Swiss government”³⁵¹ in the problems of FIFA and other sports associations hosted there. For example, one commentator stated:

Financial transparency at the [Sports Governing Bodies (“SGB”)] is relatively low and generally of bad quality in terms of readability. Due to their status as Swiss associations, many international SGBs are exempted of disclosing their accounts and properly reporting on the financial flows that enter and leave their institutions. This lack of financial transparency is probably the main reason why they are often at the centre of corruption networks. The implicit complicity of the Swiss State ... and Swiss local authorities, is undeniable. It is not unlike the organized financial opacity that enabled Switzerland to become the central node of tax evading schemes. For long, the Swiss state turned a blind eye on the financial flows involving SGBs. It was an unspoken quid pro quo for their collective decision to locate their seats, with the adjacent revenues and employment opportunities, in Switzerland.³⁵²

In speaking of the actions needed to start FIFA on the lengthy road to meaningful compliance with modern corporate governance, Harvard’s John Ruggie concluded in his report to FIFA on Human Rights:

At the risk of stating the obvious, governments have the primary obligation to respect, protect, and fulfill human rights. This includes the governments hosting international sports events as well as national sports bodies. It also includes the governments of countries in which global sports organizations such as FIFA are registered. But the responsibility of those organizations to address human rights risks with which they are involved exists independently of any government’s abilities or willingness to act on its obligations.³⁵³

Further, Alexandra Wrage, the authentically independent member

350. Wrage, *supra* note 180.

351. Duval, *supra* note 77.

352. *Id.*

353. RUGGIE, *supra* note 254, at 36.

of the IGC who refused Blatter's \$5000 per day fee and later resigned in frustration, has concluded, "[t]he only entity capable of insisting on transparency at FIFA is the Swiss government..."³⁵⁴

C. In a Perfect World

1. Other Groups

An organization created to reform football, New FIFA Now,³⁵⁵ has proposed that an independent group overseen by United Nations Educational, Scientific, and Cultural Organization (UNESCO) be established to "make practical proposals for FIFA reform."³⁵⁶

FIFA is one of the most discredited organisations in the world with serial allegations of corruption plaguing almost its every move off-the-field, symptomatic of a crisis of leadership, governance and accountability.³⁵⁷

UNESCO has a history of involvement in sports and is considered the "UN custodian of sport policy development."³⁵⁸ Additionally, the UN Office on Drugs and Crime ("UNODC") has published "a Strategy for Safeguarding against Corruption in Major Public Events."³⁵⁹ This study notes that the World Cup is precisely the type of major public event that has attracted corrupt activity.³⁶⁰

FIFA hardly needs more "proposals." FIFA must be held accountable and required to implement the many proposals that have already been made. As a very political organization and one that does not create binding legislation, the United Nations offers no hope of imposing accountability on FIFA.

2. FCPA and FIFA

One small step toward pressuring FIFA to reform would be a

354. Wrage, *supra* note 180.

355. *Charter for FIFA Reform*, NEWFIFANOW.ORG (June 2016), <https://www.newfifanow.org/charter-for-fifa-reform.html>.

356. Owen Gibson, *New Fifa Now Talks a Good Game but Sepp Blatter Will Not Be Quaking*, GUARDIAN (Jan. 21, 2015, 2:34 PM), <https://www.theguardian.com/football/blog/2015/jan/21/new-fifa-now-sepp-blatter-brussels>.

357. *Charter for FIFA Reform*, *supra* note 355.

358. NADA AL-NASHIF, UNESCO, GLOBAL CORRUPTION REPORT: SPORT 318 (Gareth Sweeney ed., 2016).

359. UNITED NATIONS OFFICE ON DRUGS AND CRIME, A STRATEGY FOR SAFEGUARDING AGAINST CORRUPTION IN MAJOR PUBLIC EVENTS (2013).

360. UNODC is currently led by Yury Fedotov, a career diplomat from Russia and earlier, the Union of Soviet Socialist Republics. There should be little doubt that even as an Under Secretary General of the United Nations, Mr. Fedotov's first loyalty is to the Russian Government.

change to how the FCPA is enforced. This act now criminalizes bribes paid to “foreign officials,” including officials of “public international organizations.”³⁶¹ The President of the United States is authorized to add entities to the list of such international organizations.³⁶² This list already includes the United Nations and the World Trade Organization, as well as the International Fertilizer Development Center and the Pacific Salmon Commission.³⁶³ FIFA is certainly an international, quasi-public institution.

It is important to emphasize that current U.S. law authorizes the President to make this change, without involving a gridlocked, do-nothing or constipated-by-lobbyists Congress.³⁶⁴ Doing so would subject FIFA officials to the provisions of the FCPA and anyone with a connection to the United States paying a bribe to a FIFA official would be paying to a “foreign official” and thus subject to the criminal provisions of the FCPA. While this would have no effect on the self-dealing within FIFA such as the Kattner, Valcke, Blatter \$80,000,000 bonus deal described above,³⁶⁵ such a designation would impact bribery by sports marketing companies, bulk ticket purchasers and vote buying within FIFA so long as there was some connection with the United States.³⁶⁶

As support for this Presidential action, FIFA already sees itself as a supranational organization. Any argument that a mere sports organization should not have its officials seen as the equivalent of leaders of sovereign nations has been answered by Blatter himself. In an interview during which he challenged the power of the FIFA Ethics Committee to suspend him from football, Blatter announced that only the FIFA Congress, and not the Ethics Committee, could remove him from office. The report of the interview continued: “Comparing himself to a state president, Blatter told Swiss broadcaster SRF: ‘If one wants

361. 22 U.S.C. § 288 (2012); 15 U.S.C. §§ 78dd-1(f)(1)(B)(ii), 78dd-2(h)(2)(B)(ii), 78dd-3(f)(2)[B](ii).

362. Bruce W. Bean, *An Interim Essay on FIFA's World Cup of Corruption: The Desperate Need for International Corporate Governance Standards at FIFA*, 22 ILSA J. INT'L & COMP. L. 367, 391 (2016).

363. 22 C.F.R. § 288 (2016).

364. Similar changes in the separate national laws enacted pursuant to the obligations undertaken by thirty-six nations to enforce the OECD Convention might further extend accountability to FIFA.

365. *See supra* Section IV.B.6.

366. Such connections may be quite attenuated as FCPA charges have succeeded where the U.S. connection has been as fleeting as a wire transfer passing through a New York bank.

to revoke an elected president, only parliament can ask for that.”³⁶⁷ If Blatter saw himself as a Head of State, that is precisely the category of bribe taker the FCPA was designed to address.

V. Forget it

A. Does FIFA Need Change?

It is obvious that a culture or equilibrium of corruption pervades the entire FIFA ecosystem. There are no current mechanisms working to fundamentally change this culture. Will the Infantino regime bring change? At his first FIFA Congress as President in May 2016 Infantino suggested no further change at FIFA was needed. “Fifa is back on track....So I can officially inform you here, the crisis is over.”³⁶⁸ This, of course, is directly from the FIFA “Corruption Crisis Playbook,” as Blatter had made a similar statement when he declared his Roadmap to Reform a success in 2013:³⁶⁹ “We have been through a difficult time. It has been a test for football and those who lead it. As your captain, I can say we have weathered the storm.”³⁷⁰

Jordan’s Prince Ali Bin Al Hussein, the man who became Infantino’s “kingmaker” by withdrawing from the FIFA presidential election at the FIFA Extraordinary Congress in February 2016 and giving his support to Infantino,³⁷¹ does not agree that the crisis is over. Prince Ali has attacked Infantino’s “complete betrayal” of FIFA immediately after the May 2016 FIFA Congress.³⁷²

Even Mark Pieth, who in 2011 said “... I’m convinced that [FIFA] will get it right this time around,”³⁷³ and was later called “Blatter’s poodle,”³⁷⁴ has come around. Pieth has called for imposing independent accountability at FIFA. For example, four weeks after the May 2016 Congress where Infantino created the right in the Executive Council to remove “independent” FIFA executives, Pieth announced: “We have to stop the self-regulation of Fifa. ... For me [Infantino’s

367. Silke Koltowitz, *Humiliated Blatter Says Only FIFA Congress Can Bar Him*, REUTERS (Nov. 25, 2015, 9:55 PM), <http://uk.reuters.com/article/uk-soccer-fifa-blatter-idUKKBN0TE2TF20151125>.

368. Gibson, *supra* note 356.

369. *See supra* Section IV.B.4.

370. Robinson, *supra* note 199.

371. *See supra* Section V.B.

372. Rumsby, *supra* note 274.

373. Pieth: *I’m Convinced FIFA Will Get It Right*, FIFA.com (Nov. 30, 2011), <http://www.fifa.com/governance/news/y=2011/m=11/news=pieth-convinced-fifa-will-get-right-1550071.html>.

374. Bradley, *supra* note 203.

move to get the right to remove independent FIFA executives] means a return to the Blatter Middle Ages.”³⁷⁵ FIFA’s “non-sponsor,”³⁷⁶ Jamie Fuller, has said, “... Fifa must be dragged kicking and screaming into change.”³⁷⁷ Additionally, the Carrard Report observed that “FIFA has a long road ahead,”³⁷⁸ and the Harvard study, “Off Pitch: Football’s financial integrity weaknesses, and how to strengthen them,” described instituting reforms in football as follows: “Nothing here will be easy to do.”³⁷⁹

Given that there is no obvious way to get the Swiss to regulate FIFA and that in any case this would be a terrifically difficult thing to achieve, should we bother? There are many higher priorities, including genocide, regional wars, terrorism, poverty, income inequality, etc. In any case, our track record in eliminating corruption is dismal.

The FCPA was a wonderful effort to rid the world of extortion and bribery in international business. A nice try. But after almost four decades, the campaign to defeat corruption, to Puritanize the rest of the world, has worked no better abroad than it has at home. We still have reports of bribery and corruption in business almost every day. TI has had nearly a quarter of a century to make the world free of corruption; but the TI Corruption Perceptions Index tells us: “Sixty-eight per cent of countries worldwide have a serious corruption problem. Half of the G20 are among them. Not one single country, anywhere in the world, is corruption-free.”³⁸⁰

And this after nearly forty years of the FCPA and nearly a quarter century of the efforts of TI.

375. *Infantino’s FIFA is a ‘return to the Blatter Middle Ages,’* SWISSINFO (June 18, 2016, 12:21 PM), http://www.swissinfo.ch/eng/mark-pieth_infantino-s-fifa-is-a—return-to-the-blatter-middle-ages-/42236068

376. A Swiss sport clothing company, Skins, led by Jamie Fuller, has declared itself to be the first “non-sponsor” of FIFA and has called upon other sponsors to withhold support. *SKINS: Official Non-Sponsor, BBD PERFECT STORM*, <http://www.bbdperfectstorm.com/portfolio/skins-official-non-sponsor> (last visited Jan. 4, 2017); *SKINS Announce Inaugural Non-sponsorship of FIFA*, NEWFIFANOW.ORG (Jan. 23, 2015), <https://www.newfifanow.org/january-23-2015.html>; Charles Sale, *Sports Ethics Campaigner Jamie Fuller Turns Heat on FIFA Sponsors to Spark Reform*, DAILY MAIL (Jan. 15, 2015, 10:18 PM), <http://www.dailymail.co.uk/sport/football/article-2912549/Sports-ethics-campaigner-Jamie-Fuller-turns-heat-FIFA-sponsors-spark-reform.html>.

377. Owen Gibson, *New Fifa Now talks a good game but Sepp Blatter will not be quaking*, GUARDIAN (Jan. 21, 2015), <https://www.theguardian.com/football/blog/2015/jan/21/new-fifa-now-sepp-blatter-brussels>.

378. 2016 FIFA REFORM COMM., *supra* note 227, at 4.

379. Andrews & Harrington, *supra* note 17, at 100.

380. *Corruption Perceptions Index 2016*, *supra* note 99.

B. An Impermissible Thought

While corruption may be difficult to measure precisely, if we look at FIFA, it is beyond dispute that corruption is rife within football. FIFA and football have been corrupt for decades. During the last quarter of the twentieth century, as FIFA's revenues multiplied, large bribes were added to football's encyclopedia of committed corrupt crimes. Given FIFA's resistance to any meaningful change in its corrupt ways and Switzerland's implicit quid pro quo of no enforcement in exchange for having sports governing associations domiciled there, should we abandon this battle? The fans love the game. And war, genocide, and poverty are just a few of the many higher priorities for national and international attention.

The culture of corruption within football may be compared to the current American system of governmental lobbying. Campaign contributors, Political Action Committees, "bundlers" of smaller campaign contributions into attention-getting size, and five K Street lobbyists for each Member of Congress are each an integral, accepted part of America's culture. We call it "lobbying," but is this just our way of legalizing bribery? As Professor Michael Johnston has written:

[A]re affluent market democracies really ... "less corrupt" [than less developed nations]... or have they just evolved legal systems that are accommodating to wealth interests? Major corporations in the United States do not bribe cabinet members in the way their counterparts bribe finance ministers in developing countries, but they may have little need to do so in a political system where wealth and corporate backing are major political currencies. America may rank high on indices of "governance," but do citizens trust their state to aggregate broad-based interests into beneficial policy? . . . Neoliberal reforms do not so much end corruption as privatize it.³⁸¹

Johnston is not alone in condemning the lobbying practices American society currently accepts. For example, Michael Mariello notes:

Former Secretary of Labor Robert Reich, now a professor at the University of California at Berkeley, doesn't make a distinction

381. Michael Johnston, *Controlling Global Corruption: Are We There Yet?*, 104 CURRENT HIST. 425, 429 (2005).

between [bribery and lobbying]. When asked . . . , “What’s the real difference between me bribing a customs agent so that I can bring a banned substance into the country or me contributing money to a senator and then cajoling him into making the substance legal for import?” Reich answered, “Frankly, I don’t see much difference. A bribe is a bribe. People authorized only to act in the public interest may not use their office for private gain. Period.”³⁸²

Today Americans accept our political campaign funding system and our lobbying practices just as our society formerly accepted slavery, smoking, and having women “stay in the kitchen.” These were cultural norms at the time and not actually the result of evil, non-homicidal dictators or European octogenarian sports figures. If we accept lobbyists as purveyors of legalized corruption, should we also accept FIFA’s corruption?

Clearly this is the wrong answer, but given the many more important matters facing our globalized world and the difficulty of imposing accountability on FIFA without action by Switzerland, FIFA’s Habitat for Crime, perhaps we must simply wait for Switzerland to act.

So long as “no one is watching,” as John Wooden has said, we can anticipate additional chapters in the FIFA Farce. Nevertheless, it is certain that hundreds of millions of people will continue to play what legendary Brazilian footballer, Pele, called the “beautiful game,” regardless of how ugly FIFA turns out to be.

382. Michael Maiello, *Corruption, American Style*, FORBES (Jan 22, 2009, 6:00 PM), http://www.forbes.com/2009/01/22/corruption-lobbying-bribes-biz-corruption09-cx_mm_0122maiello.html.

APPENDIX

Defendants and their status as of January 14, 2017

Data from the Indictment and various news sources.

	Defendant	2016 Age	Current Status
1.	Luis Bedoya , member of FIFA Executive Committee & CONMEBOL Vice President	57	PLEA ³⁸³
2.	Charles Blazer , former CONCACAF general secretary	71	PLEA 2013 ³⁸⁴
3.	Alejandro Burzaco , former General Manager and Chairman of Torneos y Competencias S.A.	51	PLEA ³⁸⁵
4.	Zorana Danis , Co-founder and Owner of International Soccer Marketing Inc.	53	PLEA ³⁸⁶
5.	Jose Hawilla , owner of Traffic Group	72	PLEA ³⁸⁷
6.	Robert Huguet , CEO of	53	PLEA ³⁸⁸

383. DEP'T OF JUSTICE, FIFA PROSECUTION UNITED STATES V. ALFREDO HAWIT, ET AL AND RELATED CASES UPCOMING COURT DATES (LAST UPDATED JUNE 15, 2017) 1 (2017), [hereinafter *DOJ List of Case Status*]; Stephen Gill, *Colombia Soccer Chief Pleads Guilty to Bribery and Conspiracy Charges in FIFA Corruption Probe*, COLOM. REP. (Dec. 7, 2016), <http://colombiareports.com/colombia-soccer-chief-pleads-guilty-bribery-conspiracy-charges-fifa-corruption-probe/>.

384. *DOJ List of Case Status*, *supra* note 383, at 2; Mike Hayes & Tom Namako, *Former FIFA Executive Charles Blazer Admits Taking Bribes for World Cup Host Country Votes*, BUZZFEED NEWS (Jun. 3, 2015, 4:04 PM), <https://www.buzzfeed.com/tomnamako/prosecutors-unseal-former-fifa-executive-charles-blazers-plea>.

385. *DOJ List of Case Status*, *supra* note 383; Jamie Rainbow, *Judge Releases Guilty Pleas from Fifa Defendants*, WORLD SOCCER (Apr. 19, 2016), <http://www.worldsoccer.com/news/judge-releases-guilty-pleas-from-fifa-defendants-370167>.

386. *DOJ List of Case Status*, *supra* note 383, at 2; Joe Harris, *FIFA Scandal Dribbles into New York Court*, COURTHOUSE NEWS SERVICE (Oct. 26, 2016), <http://www.courthousenews.com/2016/10/26/fifa-scandal-dribbles-into-new-york-court.htm>.

387. *DOJ List of Case Status*, *supra* note 383, at 2; Nathaniel Vinton, *Judge Unseals Records of Key Cooperating Witness in FIFA Corruption Case*, N.Y. DAILY NEWS (Oct. 15, 2015, 6:11 PM), <http://www.nydailynews.com/judge-unseals-records-key-witness-fifa-case-article-1.2397873>.

388. *DOJ List of Case Status*, *supra* note 383, at 2; Christie Smith & David Voreacos,

	Media World		
7.	Sergio Jadue , Vice President of CONMEBOL	37	PLEA ³⁸⁹
8.	Nicolas Leoz	87	House arrest Paraguay ³⁹⁰
9.	Jose Margulies , controlling principal of Valente Corp. and Somerton Ltd.	77	PLEA ³⁹¹
10.	Fabio Tordin , former CEO of Traffic Sports USA Inc.	51	PLEA ³⁹²
11.	Daryll Warner , former FIFA development officer	47	PLEA ³⁹³
12.	Daryan Warner , son of former FIFA executive Jack Warner	41	PLEA ³⁹⁴
13.	Jack Warner , former FIFA Vice President and Executive Committee member	73	Extradition Stalled ³⁹⁵
14.	Ariel Alvarado , member of FIFA Disciplinary	57	

FIFA Match Agent Pleads Guilty in U.S. to Corruption Charges, BLOOMBERG (Mar. 8, 2016, 6:32 PM), <https://www.bloomberg.com/news/articles/2016-03-08/fifa-match-agent-pleads-guilty-in-u-s-to-corruption-charges>.

389. DOJ List of Case Status, *supra* note 383, at 2; Brian Homewood, *Life Bans Recommended for Former Chile, Colombia Soccer Bosses*, REUTERS (Feb. 18, 2016 7:38 AM), <http://www.reuters.com/article/us-soccer-fifa-corruption-idUSKCN0VR15E>.

390. Assoc. Press, *Top Paraguay Court Rejects Nicolas Leoz's Petition to Stop Extradition*, ESPN FC (May 3, 2016), <http://www.espnfc.us/blog/fifa/243/post/2864409/top-paraguay-court-rejects-leoz-petition-to-stop-extradition>.

391. DOJ List of Case Status, *supra* note 383; Tariq Panja & David Voreacos, *Soccer Millionaire Says He Regrets Joining Bribe Scheme*, BLOOMBERG (Apr. 18, 2016, 8:54 PM), <https://www.bloomberg.com/news/articles/2016-04-19/soccer-millionaire-says-he-regrets-joining-bribe-scheme>.

392. DOJ List of Case Status, *supra* note 383, at 2; Jay Weaver, *Top soccer official with ties to Miami, U.S. pleads guilty in bribery case*, MIAMI HERALD (Dec. 3, 2015, 6:12 PM), <http://www.miamiherald.com/news/local/community/miami-dade/article47828200.html>.

393. DOJ List of Case Status, *supra* note 383, at 2; Mike Hayes & Stacy-Marie Ishmael, *FIFA Corruption Scandal Plea Hearing Transcripts for Daryan and Daryll Warner Are Released*, BUZZFEED NEWS (Jun. 5, 2015, 1:00 PM), <https://www.buzzfeed.com/mikehayes/fifa-corruption-scandal-plea-hearing-transcripts-for-daryan>.

394. DOJ List of Case Status, *supra* note 383, at 2.

395. Charles Sale, *FIFA and the 'Lost' £10,000 Watches: How Six Timepieces Went Missing Ahead of Governing Body's Glitzy 'The Best' Awards Ceremony in Zurich*, DAILY MAIL (Jan. 11, 2017, 10:14 AM), <http://www.dailymail.co.uk/sport/football/article-4106768/FIFA-lost-10-000-watches-six-timepieces-went-missing>.

	Committee		
	Juan Angel Napout , Vice President of FIFA and President of CONMEBOL	58	Not Guilty Plea with \$20mm bail ³⁹⁶
15.	Manuel Burga , member of FIFA Development Committee	59	Not Guilty Plea 12-3-2016 after being extradited from Peru ³⁹⁷
16.	Rafael Callejas , member of FIFA Television and Marketing Committee	73	PLEA ³⁹⁸
17.	Carlos Chavez , Treasurer of CONMEBOL	58	Jailed in Bolivia for embezzlement charges ³⁹⁹
18.	Luis Chiriboga , President of Ecuadorian soccer federation	70	Avoided extradition from Ecuador, but convicted in Ecuador for money laundering ⁴⁰⁰
19.	Aaron Davidson , President, Traffic Sports USA, Inc.	45	PLEA ⁴⁰¹
20.	Marco Polo del Nero , President of Brazilian	75	Remaining in Brazil to avoid extradition ⁴⁰²

396. DOJ List of Case Status, *supra* note 383; Christina Carrega, *Judge Rejects Indicted Ex-FIFA Official's Request for Later Curfew*, N.Y. DAILY NEWS (Jan. 5, 2017, 2:25 PM), <http://www.nydailynews.com/new-york/nyc-crime/judge-rejects-indicted-ex-fifa-official-request-curfew-article-1.2936187>.

397. Jack Dylan Cole, *Peru's Former Soccer Chief Extradited to US, Pleads Not Guilty*, PERU REP. (Dec. 3, 2016), <http://perureports.com/2016/12/03/perus-football-chief-extradited-following-fifa-scandal/>.

398. DOJ List of Case Status, *supra* note 383; Rebecca R. Ruiz, *Former Head of Honduran Federation Pleads Guilty in FIFA Case*, N.Y. TIMES (Mar. 28, 2016), <https://www.nytimes.com/2016/03/29/sports/soccer/rafael-callejas-pleads-guilty-in-fifa-case.html>.

399. Suman Varandani, *Bolivia Soccer Federation President Carlos Chavez Jailed, Executive Secretary Under House Arrest in Embezzlement Case*, INT'L BUS. TIMES (July 22, 2015, 3:24 AM), <http://www.ibtimes.com/bolivia-soccer-federation-president-carlos-chavez-jailed-executive-secretary-under-2019205>.

400. Assoc. Press, *Ex-Ecuador Soccer President Convicted in FIFA Graft Case*, WALL ST. J. (Nov. 18, 2016, 11:18 PM), <http://www.wsj.com/articles/ex-ecuador-soccer-president-convicted-in-fifa-graft-case-1479529118>.

401. DOJ List of Case Status, *supra* note 383, at 2; Rebecca R. Ruiz, *American Pleads Guilty in FIFA Case for His Role in Bribes Worth Millions*, N.Y. TIMES (Oct. 20, 2016), <https://www.nytimes.com/2016/10/21/sports/soccer/aaron-davidson-fifa-bribes-conspiracy.html>.

402. Samindra Kunti, *CBF Chases \$100m Legacy Money but FIFA Refuses to Hand It Over*, INSIDE WORLD FOOTBALL, INSIDE WORLD FOOTBALL (Jan. 3, 2017),

	soccer federation		
21.	Eduardo Deluca , former General Secretary CONMEBOL	76	House arrest in Argentina ⁴⁰³
22.	Rafael Esquivel , former President of Venezuelan Football Federation and CONMEBOL Executive Committee member	69	PLEA 11/10/16 ⁴⁰⁴
23.	Eugenio Figueredo , former President of CONMEBOL and FIFA Vice President	84	Guilty Plea in Uruguay to money laundering and kickbacks. ⁴⁰⁵
24.	Alfredo Hawit , Vice President of FIFA and Executive Committee member	65	PLEA ⁴⁰⁶
25.	Brayan Jimenez , President of Guatemalan soccer federation	62	PLEA ⁴⁰⁷
26.	Hugo Jinkis , Principal of Full Play Group S.A.	71	House arrest in Argentina ⁴⁰⁸
27.	Mariano Jinkis , Principal of Full Play Group S.A.	41	House arrest in Argentina ⁴⁰⁹
28.	Eduardo Li , former Chief of Costa Rica's National	57	Extradited Feb 2016

<http://www.insideworldfootball.com/2017/01/03/cbf-chases-100m-legacy-money-fifa-refuses-hand/>.

403. Hugh Bronstein, *Argentine judge denies U.S. extradition request for soccer figures*, REUTERS (Oct. 18, 2016, 4:37 PM), <http://www.reuters.com/article/us-soccer-fifa-argentina-idUSKCN12I2MF>.

404. DOJ List of Case Status, *supra* note 383; Rebecca R. Ruiz, *Venezuelan Soccer Official Pleads Guilty; Promises to Repay Millions in FIFA Case*, N.Y. TIMES (Nov. 10, 2016), <https://www.nytimes.com/2016/11/11/sports/soccer/fifa-venezuelan-soccer-official-pleads-guilty.html>.

405. Andrew Downie, *Jailed Uruguayan Reaches Plea Bargain in FIFA Case*, REUTERS (Feb. 5, 2016), <http://www.reuters.com/article/us-soccer-fifa-uruguay-idUSKCN0VE2M7>.

406. DOJ List of Case Status, *supra* note 383; Assoc. Press, *FIFA Gives Life Bans to Honduran Officials Alfredo Hawit, Rafael Callejas*, ESPN FC (Dec. 19, 2016), <http://www.espnfc.com/blog/fifa/243/post/3023554/fifa-gives-life-bans-to-honduran-officials-alfredo-hawit-and-rafael-callejas>.

407. DOJ List of Case Status, *supra* note 383.

408. *US Extradition Request for Hugo and Mariano Jinkis Denied*, BUENOS AIRES HERALD (Oct. 19, 2016), <http://www.buenosairesherald.com/article/223247/us-extradition-request-for-hugo-and-mariano-jinkis-denied>.

409. *Id.*

	Football League and FIFA & CONCACAF Executive Committees		PLEA 10/10/16 ⁴¹⁰
29.	Jose Maria Marin , FIFA Organizing Committee	84	Not guilty plea ⁴¹¹
30.	Jose Luis Meiszner , General Secretary of CONMEBOL	70	Fighting extradition in Argentina ⁴¹²
31.	Romer Osuna , member of FIFA Audit and Compliance Committee	73	Fighting extradition in Bolivia ⁴¹³
32.	Julio Rocha , former FIFA Development Officer	85	PLEA ⁴¹⁴
33.	Rafael Salguero , former FIFA Executive Committee member	71	Held in Switzerland as flight risk. ⁴¹⁵
34.	Costas Takkas , former FIFA General Secretary	59	Not Guilty Plea. ⁴¹⁶
35.	Ricardo Teixeira , former President of Brazilian soccer federation	69	
	Hector Trujillo , General Secretary for Guatemalan soccer federation	63	Not guilty plea ⁴¹⁷
36.	Reynaldo Vasquez , former President of Salvadoran	60	

410. DOJ List of Case Status, *supra* note 383; Rebecca R. Ruiz, *Costa Rican Soccer Official Pleads Guilty in FIFA Corruption Case*, N.Y. TIMES (Oct. 7, 2016), <https://www.nytimes.com/2016/10/08/sports/soccer/eduardo-li-fifa-corruption-case-costa-rica.html>.

411. DOJ List of Case Status, *supra* note 383; Nate Raymond, *Plea Talks Under Way in FIFA Bribery Case as U.S. Trial Date Set*, REUTERS (Sept. 19, 2016, 3:22 PM), <http://www.reuters.com/article/us-soccer-fifa-court-idUSKCN11P1UI>.

412. Kenza Bryan, *Why Are Two US Prosecutors Snooping Around The Argentine Football Association?*, BUBBLE (Sept. 5, 2016, 4:31 PM), <http://www.thebubble.com/why-are-there-two-us-prosecutors-snooping-around-the-argentine-football-association/>.

413. James Tyler, *The FIFA Scandal: The People You Need to Know*, ESPN FC (Feb. 5, 2016, 1:51 PM), <http://abcnews.go.com/Sports/fifa-scandal-people/story?id=36743973>.

414. DOJ List of Case Status, *supra* note 383; Assoc. Press, *Ex-Nicaragua Chief Julio Rocha Pleads Guilty to Corruption Charges*, ESPN FC (Dec. 7, 2016), <http://www.espnfc.us/blog/fifa/243/post/3014108/ex-nicaragua-chief-julio-rocha-pleads-guilty-to-corruption-charges>.

415. Tyler, *supra* note 413.

416. DOJ List of Case Status, *supra* note 383; Raymond, *supra* note 411.

417. DOJ List of Case Status, *supra* note 383.

	soccer federation		
	Jeffrey Webb , former Head of CONCACAF and FIFA Vice President	52	PLEA ⁴¹⁸
37.	Traffic Sports International Inc. BVI		PLEA
38.	Traffic Sports USA		PLEA

418. *DOJ List of Case Status*, *supra* note 383; Reshma Ragoonath, *Jeff Webb Pleads Guilty*, CAYMAN REP. (Dec. 4, 2015), <http://www.caymanreporter.com/2015/12/04/jeff-webb-pleads-guilty/>.